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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 2, 1999, at 12:30 p.m.

Senate

SATURDAY, JANUARY 23, 1999

The Senate met at 10:05 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have taught us to seek and maintain unity. You've also taught us that this unity is so precious that we should be willing to sacrifice anything in order to maintain it—except the truth. Help us to affirm the great undeniable truths that twine the bond of oneness: We are one Nation under Your sovereignty; our patriotism binds us together inseparably; our commitment to the Constitution is unswerving. In these bonds that cannot be broken, this Senate has been able to deal with the arguments, issues, and opinions of this impeachment trial. Continue to inspire the Senators with civility as they work through answers to the questions raised today.

Refresh and rejuvenate those who may be weary or burdened. Dear God, preserve the unity of this Senate for its future leadership of our beloved Nation. In Your holy Name. Amen.

The CHIEF JUSTICE. The Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Loretta Symms, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial are approved to date.

Pursuant to the provisions of Senate Resolution 16, there are 11 hours 54 minutes remaining during which Senators may submit questions in writing directed to either the managers, on the part of the House of Representatives, or the counsel for the President.

The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice.

And thank you, Chaplain, for your opening prayer. I know we all listened and appreciated the admonitions that were given in that prayer.

ORDER OF PROCEDURE

I want to say, again, I appreciate the participation of all the Senators yesterday. Fifty questions were asked, I think a lot of good questions, and obviously good responses. We have a considerable amount of time left for questions. But, again, it is our intent to go today as long as the Senators feel that they have a need for further questions. It is up to 16 hours; it doesn't require 16 hours. So I think we should go forward and try to ask the needed questions, and then get a sense of where we are as we go through the day.

But at any rate, it would be our intent not to go later than 4 p.m. We hope to take a 1-hour lunch break sometime around 12 or 12:30, but it will depend on how the questions are going. We will also take a break here in an hour, hour and a half, something like that.

Following today's session, the Senate will reconvene on Monday at 1 p.m. and resume consideration of the articles of impeachment. All Members will be notified of the details of Monday's schedule, and beyond that, once we have had an opportunity for a consultation between Senator DASCHLE and myself and we get a feel for exactly what Senate Resolution 16 provides in terms of activities on Monday and Tuesday. In a continuing effort to make this as bipartisan and as fair as possible, you will note yesterday while we alternated back and forth, some of the questions were directed from this side to the President's counsel and the reverse. I am sure that will happen again some today. We began the first question yesterday and you concluded; so today we would reverse that. Senator DASCHLE will ask the first question and then we will go through the process until we complete those questions, with us ending with the last question sometime today.

With that, Mr. Chief Justice, I yield the floor.

The CHIEF JUSTICE. This question is directed to the House managers from Senator REID of Nevada.

Would you please tell us whether you provided notice to counsel for the President, or to any official of the United States Senate, of the managers' discussions with the Office

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

of Independent Counsel regarding an informal interview of Ms. Lewinsky, and the intention of the Office of Independent Counsel to file a motion in court to compel Ms. Lewinsky to meet with the managers? If you provided no such notice to counsel for the President or the Senate, please tell us why not.

Mr. Manager BRYANT. Mr. Chief Justice and Senators, distinguished colleagues, no, the answer to your question. I am not aware of any such notice that was provided as described in the question.

I would like to make some clarification on this in terms of the witness, Monica Lewinsky—potential witness. As we have been in an evolving discussion over the last few weeks in terms of if we are allowed to call witnesses by the Senate, who those witnesses might be, what our list might look like, obviously, the name of Monica Lewinsky comes up as a potentially very important witness to these proceedings.

As many of us in this Chamber have had experience in the law, we very much would like to talk to some of these witnesses. The core group that we have considered, however, are, in essence, in the White House control; they are either employed by the White House or close friends and associates of the White House. I am sure the White House, with the attorneys, would be very willing to cooperate with us in making those people available.

However, Ms. Lewinsky presents a very unique situation in that she is geographically some other place. I am not sure where she is—Los Angeles, New York, maybe Washington. But she has attorneys we have to deal with. It would be very critical, as any attorney in this body knows, that before you actually talk to a witness, and a witness of that importance to this proceeding, that before you produce her for that testimony, that you talk to her. It was intended to be a conversation to discuss it with her.

I have personally not seen the immunity agreement that she has, but we understand there is a cooperation proceeding and that that agreement is between her, her attorneys, and the independent counsel, the OIC—not Congress, not the managers, not the Senate. So we have no duty, no legal standing, as I understand it, to go in and enforce that agreement, were she not to want to meet with us and cooperate pursuant to the terms of those agreements, to the agreement.

We did contact the OIC to arrange that meeting, and once we understood that the attorneys did not want to cooperate and furnish their client to meet with us, we asked the OIC to pursue, further, the effort to have Ms. Lewinsky come in and meet with us on an informal basis as, again, anyone would do in preparation for calling a witness at a trial.

Thank you.

The CHIEF JUSTICE. This is a question from Senators FITZGERALD, HATCH, Mr. SMITH of Oregon, and Senator THURMOND, directed to the House managers.

How do you address the White House's argument that removal is a disproportionate remedy for the alleged acts of perjury and obstruction of justice and should there be any particular concern about establishing a precedent that a President can commit felonies while in office and remain President of the United States?

Mr. Manager BUYER. I think the proportionality question yesterday was very good in that there is a psychology to be used in judicial decisions. I think there are different factors that will influence that decisionmaking process and the ideals that you, as a sitting judge and juror, will use to strive to attain them. It is important, I think, also, to have reasonableness and just solutions if you are going to individualize the case, as some may hope to do.

I think as a society, if you take a step backward, we are kind of caught in two diverse trends at the moment. You have one trend whereby judges like to seek individualized solutions to particularized cases; and the other trend is we will apply the law to individualized cases.

So, let me give you two best examples of both of those. With regard to the best example of individualized solutions to a particular case would be our juvenile justice system. That is where the court would come in and use a variety of means because reformation is, in fact, the goal, and that is what we do in the juvenile court system.

As a side note of that, I think in society, with regard to—it could be an act of a firing, it could be an administrative hearing for removal, it could even be a Governor who had an employee who had an illicit affair and it was a political appointee and that Governor decided, maybe he decided applying the proportionality that he remove his own political appointee for having an affair. So the individualization can occur out there.

The other example I will comment on is the justice according to law, and that other trend out there caught in our society—a legislature is not only here in Washington but across in our State jurisdictions; you have legislatures that are beginning to take some of the decisionmaking processes away from judges and they are saying, specifically, in Federal sentencing guidelines, as an example, that if in fact a person is convicted of a particular crime or possession of cocaine, the legislature is now telling these judges exactly: This is, in fact, what your sentence will be.

So, we are kind of caught, I want you to know, as you are sitting as judges and jurors, in this diverse trend that is occurring in our society. I know as you listen to lectures even from the Supreme Court Justices, they are well aware of these trends, and so you are sitting and you have to come in your own conscience on how best to make that particular decision. I will note, though, that we have stressed the latter. We have stressed that the rule of law and its importance to our society not only to serve the public and social interests, but you are the guardian. When, in fact, there are crimes against the State, who is there to serve the public interest? Especially if, in fact, it is the President, the Vice President, a judicial officer, or other civil officers. Here where you have the President of the United States who has been accused of perjury and obstruction of justice, which are crimes against the State, and as Blackstone said, ''are side by side with bribery,'' who is the guardian, then, of the public interest? So in the question of proportionality, it is you; it is you.

So when Mr. Craig began by arguing that this trial is not about vindicating the rule of law, that only criminal courts are charged with that duty, I would respectfully submit that the President's counsel is confusing the punishment of a particular criminal case or controversy in a court with your duty as Congress to ensure that future officers entrusted with power granted by the people may not, while their offices eviscerate the proper administration of justice which is a cornerstone of our Republic.

I now yield to Mr. GRAHAM.

Mr. Manager GRAHAM. I know I have a minute. Great minds can differ on this one: Can you have a high crime, and for the good of the nation removal is not appropriate? I was asked that yesterday, and I kind of wanted to make a case about why I think this is not true. This is a great question.

The problem we have here is that you run into the judge cases. When you find that a judge perjured himself, you remove the judge. The President is different than the judge; I will certainly concede that. But we don't want, I think, in the use of proportionality, to create a standard that doesn't make any sense, that confuses people. The law loves repentance. Baptists love repentance. I am a Baptist. In my church, everybody gets saved about every other week. The idea that if you will come forward and admit you are wrong, you will get a different result, is loved in the law.

Another thing to consider about proportionality is the impact on society. I think you should consider that. I think very much you should consider, even if this is a high crime, the impact on our society, if you decided to make the ultimate punishment. The death penalty of a political crime is removal from office. I started that train of thought 3 months ago. Impeachment is equivalent to the political death penalty. Every felony doesn't allow you to have a death penalty. What I hope you will be able to do, as a wise body, is not leave this confusion behind—whether or not it is a crime.

Ladies and gentlemen of the Senate, it can be a high crime, and you then have to decide the impact on society. But if you leave us confused about whether or not this is a crime, the impact on society is far greater than if you make the decision that it is a

crime, but proportionally it is not what the death penalty would call for. It would not be a political death penalty case. Thank you very much.

The CHIEF JUSTICE. This question is from Senator LEAHY to the House managers:

Did any of the managers consult with any Member of the Senate before seeking aid from Kenneth Starr to speak with Ms. Lewinsky? Did you discuss whether this violated the Senate's 100–0 vote on trial procedure?

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice. The question is a valid question to ask. We did not consult with any Senators about this. We don't think that what we wanted to do, to talk to Ms. Lewinsky, has anything to do with the rule you passed. We don't want to violate those rules and we don't think we have.

As anybody who knows, if you have a witness that you are going to produce, you have a right to prepare that witness. It is as plain and simple as that.

I have practiced a lot of trial law before I came to Congress, and a number of you have. If you are going to have a deposition given, it is going to be your witness. You are going to go down and try to talk to that witness and prepare that witness. You have a right and obligation to do that. It has nothing to do with the formal proceeding of taking the deposition, which is covered by the rules that you have passed, as to how and when depositions will be taken, and it has nothing to do with the issue of her testimony actually here, where the opposing counsel would have a right to be present. It has everything to do with the right of anyone to prepare their witness, to get to know their witness, to shake hands, say hello, to put a face on that. It is normal practice to do this.

We see in no way how that abrogates this rule, or in any way violates what you have set forth. As a matter of fact, we think we would have been incompetent and derelict as presenters of the witnesses, if we get a chance to present them, if we couldn't talk to her. We tried to do this some time ago. We suggested to her attorneys that it would be appropriate to quietly have this discussion, to meet her, as you normally would. I think they were apprehensive. They wanted a court order, I guess, to force this to occur, and that is why we eventually have gone to do that.

Thank you.

The CHIEF JUSTICE. This question is from Senators LOTT and THURMOND to the House managers:

Please give specific examples of conflicting testimony or an incomplete record where the calling of witnesses would prove beneficial to the Senate.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. Good morning, everyone. I want to echo what my colleagues have said—that we are trying to be prepared. We are trying to move through this process expeditiously. But we do believe that we need to call witnesses; and secondly, that we should be prepared, without any delay, to proceed forward in the event we are granted that opportunity.

One of the reasons that the calling of witnesses is important is because there exists conflicts in the testimony. The White House counselors, the President of the United States, has denied each and every allegation under the two articles that have been submitted to this body. I focused on the obstruction of justice, and each of the seven elements of the obstruction of justice has been denied by the President. This puts it all in issue.

For example, let's start with the issue of lying to the aides. The President said he was truthful with his aides, Mr. Podesta and Sidney Blumenthal. Yet, if you look at the testimony of John Podesta, where he says the President came in and denied having sex of any kind with Ms. Lewinsky and goes into the details of that, that is in direct conflict with the testimony of the President of the United States. The same thing is true of the testimony of Mr. Blumenthal versus the testimony of the President of the United States.

Another conflict in the testimony is between the President and Ms. Lewinsky—in a number of different areas. First of all, in regard to the gifts, the President said, ''And I told her that if they asked for gifts, she had to give them.'' That is the President's testimony. Yet, Ms. Lewinsky says that in that conversation the President said, when asked about the gifts, ''Give them to Betty.'' Then he says, ''I don't know,'' or ''Let me think about it.'' Again, that is a direct conflict between Monica Lewinsky and the President.

In regard to Monica Lewinsky, he was coaching her testimony or suggesting to her that ''Maybe you can sign an affidavit,'' or ''You can always say you were coming to see Betty, or that you were bringing me letters.'' This is the testimony of Monica Lewinsky. What does the President say regarding that? He said that he never talked to her about a cover story in a legal context. In other words, it is a denial of obstruction of witness tampering, in contrast to the testimony of Monica Lewinsky. Obviously, there is a conflict in the details of the relationship.

There is a conflict between the testimony of Monica Lewinsky and Vernon Jordan in three different areas. Ms. Lewinsky said she shared with Mr. Jordan some details of the relationship. Mr. Jordan says that was not accurate. Ms. Lewinsky says in a particular meeting that Mr. Jordan—where they discussed about notes she had been keeping, Mr. Jordan said, ''Go home and make sure they're not there.'' But Mr. Jordan denies that.

In another area, on the affidavit, Ms. Lewinsky says that she brought to Mr. Jordan the affidavit, and he assisted in making some corrections. Mr. Jordan does not recall that. So there are conflicts between Ms. Lewinsky and Mr. Jordan.

There are conflicts between Ms. Currie and the President in regard to the coaching incident. Ms. Currie said the statements were made and taken in the sense that ''the President wished me to agree with the statement.'' The President says, ''I was trying to get as much information as quickly as I could.'' Obviously, Betty Currie testified before the grand jury before the President did, and there were never any follow-up questions. I would want to ask her: What did you say in response? Did you provide any information that the President was soliciting at that particular moment, according to the defense he has asserted? So there is conflict there.

There is a conflict between the President and a witness that we would offer from the deposition. The President denies that he focused on what Attorney Bennett was stating in reference to the false affidavit. I believe that we can offer a witness—it could be in the form of an affidavit or deposition—that would testify that he was focusing, paying attention.

So there is clear conflict in the record that can only be established through the presenting of additional questions or additional witnesses.

The need for witnesses is so basic and fundamental to our truth-seeking system of justice in this country that words fail me in making the case that we should call witnesses and then you should permit it in this proceeding.

We are sympathetic totally with the timeframe and the time constraint of the U.S. Senate, and for that reason we will prepare our witness list, we will accommodate a quick session. The White House counselor said this is going to drag on for months. If it drags on for months, it is because they want it to drag on for months. We will do all that we can to end this in a timely fashion, and the American people and the U.S. Senate need to understand that.

Why are the White House counselors so concerned about witnesses? Many of these witnesses are friendly to them. We are in a truth-seeking endeavor, and I would respectfully submit that the calling of witnesses would help resolve the conflicts that I have recited.

The CHIEF JUSTICE. This question is from Senator DODD to the counsel for the President:

Do you believe that a fundamental question of fairness and due process has been raised by the failure of the House managers to notify you of the proposed Lewinsky interview or by your exclusion from that interview? And do you wish also to respond to Mr. HUTCHINSON's comments?

Mr. Counsel RUFF. If I may, Mr. Chief Justice, I will use most of my time on the first part of that question and try to perhaps weave in a few comments on the second part.

I am not going to seek here this morning to vindicate the interests of this body; that is for others. But I do think it useful to speak for a bit about the interests of the accused, the President of the United States.

It is odd as I think we listen to the managers explain what they were seeking to do to put that in the context of what we know was actually happening here. It was suggested that they wanted to just have a conversation like any lawyer getting ready for a trial would want to have a conversation with a witness before he or she put the witness into a deposition or on trial—that it was sort of normal for a trial lawyer to do this.

I think one of the managers suggested they just wanted to say ''hello'' to put a face on it. And they even suggested that counsel for Ms. Lewinsky wanted a court order to force their client to testify. Well, as we will all see once the record is made available to everyone, that last point is sheer nonsense.

But I suggest that earlier suggestions that just a friendly little chat was all they were looking for is belied by the notion of what we have here is the managers using their ''institutional role'' to get the independent counsel to join with them and use the authority that he has under the immunity agreement to threaten Ms. Lewinsky with jail, to threaten her with violation of her immunity agreement, and opening up the prospect of prosecution if they do not meet in a friendly little conversation, just say hello, just like to meet you, gathering with the managers.

Can you imagine what that little conversation is going to look like, held in the independent counsel's office, with the people there who have the capacity to put Ms. Lewinsky in jail, while there is this friendly little conversation, just say ''hello,'' normal everyday discussion between the trial lawyer and the witness he would like to get to know?

From the perspective of my client for the moment, putting aside the rules which you all agreed on as to how we ought to proceed, can we really say that is just normal, just OK, to have one side using the might and majesty of the independent counsel's office, threatening a witness with violation of an immunity agreement if she doesn't agree to fly across the country and meet for this friendly little chat? I think not.

I don't know whether I have a minute or two left. But on the issue of conflicts, this is, of course, something that has been the subject of much discourse over the last few days. Let me just take a couple of examples put to you by Manager HUTCHINSON.

On the issue of the statements made by the President, Mr. Podesta, and Mr. Blumenthal, there is no conflict in the testimony here. The President indeed said that he was trying to keep his aides from becoming witnesses. He even said that he didn't even remember his conversation with Mr. Podesta but he took as true—this is what he said to the grand jury—he accepted as true that Mr. Blumenthal said this is what that conversation sounded like. Mr. Podesta said that is what the conversation was. There was no conflict. The President indeed adopted in the grand jury what those people would say. And of course he didn't put them into the grand jury in order to repeat some or to mislead the grand jury as to their knowledge of what they told him. They testified truthfully in the grand jury when they recited their conversations with the President.

But I want to move just a second to something you have never heard before in the entire days that we have been sitting here. We heard little hints about how Vernon Jordan might be a liar because of what he said about December 11. All of a sudden just 5 minutes ago, this body heard for the first time he not only may be a liar about the job search, he may be a liar about destroying evidence. Words fail me.

The CHIEF JUSTICE. This is a question from Senator ABRAHAM to the President's counsel:

Is it your position that Ms. Lewinsky was lying in her grand jury testimony, her grand jury deposition, and her FBI interviews when she said that the President engaged in conduct with her that constituted ''sexual relations'' even under his narrow interpretation of the term in the Jones deposition? Is it your position that she was also lying when she gave essentially the same account contemporaneously with the occurrence of the events to her friends and counselors?

Mr. Counsel CRAIG. Senator, our position is not that she is lying. Our position is that there are two different versions of what happened, and there is a discrepancy.

In my presentation to the Senate, I acknowledged that there was a disparity between what the President had recounted and what Ms. Lewinsky said happened when it came to recalling and reporting these specific rather graphic and intimate details concerning their activities. I pointed out that, with respect to other essential elements of the relationship, there was no disagreement that they acknowledge that there was a relationship, that they tried to conceal it. But I also suggested—and I suggest to you today—that not every disagreement, not every discrepancy, is the foodstuff or the subject of a perjury charge.

I also made the observation that perhaps this kind of conflict of testimony as to who touched who, when, where, and why, was not the kind of conflict that this institution would want to resolve through testimony on the floor. If you have any doubts about that point, I would suggest you read Ms. Lewinsky's August 20 testimony before the grand jury which is very complete and entirely and vigorously dedicated to eliciting every single gritty detail of what went on between them. I said also that I thought that this disagreement, this disparity, was of questionable materiality. Let me explain why.

On January 29, Judge Wright ruled that Ms. Lewinsky's testimony about her relationship with President Clinton was unnecessary and maybe even inadmissible; that she had had no information relating to the core issues of the case. She made that ruling after all the allegations about that relationship had been made public. And the judge knew what had been reported in the newspapers and what was generally understood about it at that point. She had been there when the President testified about this. And she concluded that Ms. Lewinsky's testimony was not required, at least for the Paula Jones case. In truth, Ms. Lewinsky was an ancillary or peripheral witness in the Paula Jones case. She had absolutely no firsthand knowledge about what happened in the Excelsior Hotel when Ms. Jones claimed that then-Governor Clinton made an unwelcome sexual overture to her. Ms. Lewinsky had nothing to add or subtract, no ability to testify about that issue.

So on the issue of the materiality to the Jones case as to the truth of what actually happened between them, it is clear it is of questionable, if no, materiality whatsoever. She was a peripheral witness on issues not having to do with the core issues of the case, and the case had no legal merit.

Please recall that the judge concluded that the case had no legal or evidentiary merit. Please also remember that the Jones lawyers, when they were asking these questions of President Clinton, presumably knew the answers to these questions about the relationship because they had been fully briefed the night before.

Now, as to the question of the materiality of this testimony and this issue of who touched whom, when, where and why to the grand jury, let me just say this: The House managers claim that one or the other must be lying because both cannot be correct. They argue that if you believe Monica Lewinsky on this issue, you must disbelieve Bill Clinton, and if you disbelieve Bill Clinton, you must conclude that he knowingly perjured himself when he denied under oath having this kind of contact with Ms. Lewinsky.

Now, this direct issue was addressed by the panel of expert prosecutors that we brought to testify before the Judiciary Committee, and they all agreed that this kind of issue would never be the subject of a perjury prosecution. I would urge you to go back and look at some of the testimony that they gave to the Judiciary Committee. They talked about the oath-on-oath issue, they talked about what is independent corroborative evidence and what is not, and they concluded that no reasonable, though responsible, prosecutor would bring this kind of case based on that kind of an issue.

We are not arguing with the managers about the law. We are not arguing with the managers about the disparity. We are talking about prosecutorial practices, what in reality would be a criminal prosecution, and I submit to you that no reasonable, no responsible prosecutor would bring this kind of a case based on that kind of evidence.

Thank you.

The CHIEF JUSTICE. This is a question from Senator DASCHLE addressed to counsel for the President:

Do you believe that it is a requirement of due process and fairness that you be allowed to participate in the Lewinsky witness debriefing sought by the managers, and do you believe that the House would have asked for the same right if the White House had attempted to interview Ms. Lewinsky?

Mr. Counsel RUFF. Mr. Chief Justice, that question raises an interesting mix of issues, because I think in one respect the House managers are correct, that once the Senate determines that it is prepared to go forward—I trust it will not—but if it does determine that it is prepared to go forward in some way with respect to the depositions of witnesses, at that point, with the Senate having made that decision, it would be appropriate for both sides to seek a voluntary, consensual, typical opportunity to meet with any witness in a setting that doesn't involve having the prosecutor with life and death authority over that witness doing the debriefing or being present while you talk to the witness.

Thus, although I will take the opportunity of offering to sit in on any meeting between the managers and the independent counsel and any witness, because I would certainly like to know what the mood and the atmosphere of that process really sounded like, the issue here, I think, is not so much whether it would be nice to sit in on that meeting but whether there can be any hope for due process, fairness and opportunity for both sides, or certainly my side—I won't speak for the managers—to have an opportunity for a reasonable, fair and open discussion voluntarily with any witness who will talk with us, not—not to be too rhetorical about this—with the looming presence of the prosecutors sitting in the room with us.

As everyone who practices in this district knows, indeed, it is a matter of law that a prosecutor may never interfere with the access of any witness to defense counsel. I can't think of much more interference than being required to sit in the room with the prosecutor and with another prosecutor while that kind of discussion goes on.

So the answer is, fairness, no. But if it is my only opportunity to meet with Ms. Lewinsky, I will take it. But I trust that as a matter of due process it will not be.

The CHIEF JUSTICE. This is a question from Senators DEWINE, COLLINS and MURKOWSKI to the House managers:

With all of the conflicting testimony that exists on the record between Monica Lewinsky and Betty Currie, for example, how are we to resolve the questions of perjury and obstruction of justice without observing the demeanor of witnesses?

Mr. Manager HUTCHINSON. I do not think there is any way to resolve the conflicts in their testimony without calling witnesses. You can read the transcripts and you can look at those and you can try to determine whether there is any corroborating evidence, how you can believe it, make some of those kinds of evaluations. But particularly whoever you are looking at, whether it is Monica Lewinsky or Betty Currie, there are followup questions and there is the demeanor that allows you to determine who is telling the truth and who you believe.

And in contrast, Mr. Ruff tries to make the point that somebody is lying here, and maybe somebody is lying, but a jury —in this case the Senators—can look at this and say, well, someone is not recalling the same way, someone is more believable because their recollection is better, it is corroborated, or you could conclude that someone is lying. It doesn't always break down that simply, but you have to evaluate that. And that is how you resolve it.

But let me just come back—I think what we see here today is the White House counsel do not want to talk about the facts. They do not want to talk about this case. They do not want to talk about obstruction of justice; just like in the House, they want to talk about the process. They want to talk about everything that is going on except for the case of obstruction of justice. And it probably will be the news story later on today, the questions that they have raised about this.

But the fact is, it is very simple that they have access to Betty Currie. Every time the President has talked to and tried to coach Betty Currie, I don't think the President invited the independent counsel in when this was under investigation, or the Paula Jones lawyers. I don't think that happened. I don't think that—at least from the news clips, when I saw Betty Currie hugging the President, I don't think he invited the House managers in. I didn't necessarily expect him to. But we have to be prepared.

And I will just tell you right now, so nobody is surprised, if we get to call Vernon Jordan, I don't want to delay the U.S. Senate in order to be prepared for that, so I confess today that I called up William Hundley, the lawyer for Vernon Jordan, to visit with him.

Now, I hope that if you talk to any witnesses, that if you feel it is fair, that you will give us a chance to join with you in that. But, obviously, this is an adversary process we are engaged in, and I think that we today in this question and answer session that you all so graciously extended to us should focus on the obstruction of justice charges because that is what you have to determine—on the perjury allegation, because that is what we have to determine today.

I thank the Chief Justice and the Senators.

The CHIEF JUSTICE. This question is from Senators KOHL and EDWARDS. To whom is it addressed? Oh, it is to the House managers:

Throughout this trial both sides have spoken in ''absolutes''; that is, if the President engaged in this conduct, prosecutors claim he must be convicted and removed from office, while the President's lawyers argue that such conduct does not in any way rise to an impeachable offense. It strikes many of us as a closer call. So let me ask you this: Even if the President engaged in the alleged conduct, can reasonable people disagree with the conclusion that, as a matter of law, he must be convicted and removed from office—yes or no?

Mr. Manager GRAHAM. Absolutely. And this is a hard case in a couple of areas, and I think it is an easy case in many areas.

The Constitution reads that upon conviction, the person shall be removed. You have to put it in the context of the judge cases, because that is where it gets to be hard for this body. Because of the precedents of the body when you apply the same legal standard of high crimes and misdemeanors to the fact that a judge who was convicted of perjury was removed by the body, and you conclude in your mind that the President committed perjury, you have a dynamic you have to work through.

Mr. Bumpers says there is perjury, then there is perjury. I would suggest to you that the allegations of perjury and obstruction of justice in this case are not trivial. It is not about a speeding ticket or a trivial matter. It is about the activity of the President when he was defendant in a lawsuit, a sexual harassment lawsuit, when he was told by the Supreme Court you have to play and you have to play fairly.

If you determine that he committed the crime of perjury and you determine that he committed the crime of obstruction of justice, based on the precedents of the Senate I think you would have a hard time saying under the situation of this case that that is not a high crime. But I would be the first to admit that the Constitution is silent on this question about whether or not every high crime has to result in removal.

If I was sitting where you are, I would probably get down on my knees before I made that decision. Because the impact on society is going to be real either way. If you find this President guilty in your mind, from the facts, that he is a perjurer and that he obstructed justice, you have to somehow reconcile continued service in light of that event.

I think it is important for this body to not have a disposition plan that doesn't take in consideration the good of this Nation. I have argued to you that when you found that a judge was a perjurer, you couldn't in good conscience send him back in the courtroom because everybody that came in that courtroom thereafter would have a real serious doubt.

I will argue to you that when you find this President guilty of perjury, if you do, that he has violated his oath and that by a consequence of that, some public trust has been lost. And I would show to you the body of evidence

from this question, ''Do you trust William Jefferson Clinton?''—the American people will tell you—three out of four say no. But the American people will also tell you that I understand what happened here and some want him removed and some don't. And you have to consider what is best for this Nation.

I will yield to Mr. Buyer in a second, but the point that I am trying to make, not as articulately as I can, is that I know how hard that decision is. It has also been hard for me.

It has never been hard to find out whether Bill Clinton committed perjury or whether he obstructed justice. That ''ain't'' a hard one for me. But when you take the good of this Nation, the upside and the downside, reasonable people can disagree on what we should do.

Mr. Manager BUYER. I would just like to remind all of you that the impeachment process is intended to cleanse the executive or the judicial office when it is plagued with such a cancer as perjury or obstruction of justice, which violates the oath required to hold those high offices.

Now, what may be turning in the gut of some of you are the precedents of the Senate, when in fact you have turned out of office, you have exercised your judgments of proportionality when these judges violated their oaths and had perjury, you said they shall be removed from office.

Now there are some that are going, well, I am uneasy in this case with the President. That is what may create a little problem here. I would suggest to you that you actually have findings of fact; that the Senate has findings of fact that the President, in fact—he lied or he did not lie or he committed an obstruction; that you actually have findings of fact. And then you can move beyond to the questions of application of the law.

But when the Senate has performed such a cleansing and removed Judges Nixon, Claiborne and HASTINGS, all three of them impeached for perjury in some form—and in Judge HASTINGS' case even though he had been acquitted of the criminal case—the Congress, in particular the Senate, you have a duty to preserve the integrity of public office, and that is what impeachment was precisely designed to do.

The CHIEF JUSTICE. This is a question from Senators VOINOVICH, JEFFORDS and CHAFEE to the House managers:

In her interviews with the Office of the Independent Counsel, Ms. Lewinsky stated that on January 5, 1998, the President told her not to worry about the affidavit because he had seen 15 others. Did the President mean that he had seen previous drafts of Ms. Lewinsky's affidavit, or did the President mean that he had seen drafts of other affidavits that were in some way connected to the Paula Jones matter?

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice. You can take that either way. But I believe in the context—and I presented this to you the other day—in which the President uttered those words, that the most logical conclusion is that he had seen 15 other drafts of hers. If you remember, she was discussing with him the issue of whether he wanted to see this particular draft of her affidavit. And at that particular moment he said, ''No, I don't want to. I have seen 15 others.''

Technically speaking, he could have seen 15 other affidavits in his life somewhere back in Arkansas, who knows? But it strikes me that the logical conclusion, the commonsense conclusion in the context of everything else that you see this President was intent on and had in his mind, and the interest that he had already shown from all the conversations that he had had with Vernon Jordan and others to make sure that this affidavit was on track, and knowing that he was going to testify in a few days himself in the Jones case, and rely on it and in fact did go in and tell the same cover stories that were in this affidavit to the court, untruthfully, that the probabilities are pretty good, that common sense says that he was saying he had seen 15 other drafts of this version of this affidavit. But that is for you to decide. That is a judgment call for the triers of fact. Thank you.

The CHIEF JUSTICE. This is a question from Senator LEAHY to counsel for the President:

Could you reply to the statement just made by Manager MCCOLLUM.

Mr. Counsel KENDALL. Mr. Chief Justice, on Thursday afternoon I went over, in perhaps tedious detail, the facts relating to the affidavits. I pointed out that there was no way in which—there was no evidence that the President saw any affidavit draft. Mr. Manager MCCOLLUM just now, I think, admitted that he has only a speculation. He doesn't have any record evidence. The President denied seeing any affidavit draft. I pointed out in the managers' chart 7 that their theory about when Ms. Lewinsky could have gotten an affidavit was simply wrong because their theory was she got it on January 5. This is a single affidavit draft. The evidence plainly shows that she could not have gotten it until January 6. There is simply nothing in the record—and the independent counsel interviewed Ms. Lewinsky extensively, both in interviews and before the grand jury—and there is simply no evidence whatsoever that the President saw any drafts or, indeed, that there were 15 drafts.

Let me say a word about whether or not we are addressing the facts. I am not going to frighten you. I am not going to go back through the obstruction of justice evidence. But I think if you will remember the presentation—first by Mr. Craig who addressed in detail the evidence with regard to perjury, then if you will recall what Ms. Mills said addressing two of the seven allegations of obstruction of justice, and with what I said to you on Thursday afternoon for almost 3 hours—and I thank you for your uncommon patience; you were attentive all the way through that exercise—you know that we have addressed the facts. What we had yesterday, what Mr. Ruff has already addressed, is, again, I will use the word ''remarkable'' occurrence involving the independent counsel.

We have addressed the facts, and there is simply nothing to support in all this record, this heavy, long record, that the President had any review of any affidavit or, indeed, that there were more than one or two drafts of Ms. Lewinsky's affidavit.

The CHIEF JUSTICE. This question is from Senators DEWINE, SANTORUM, and FITZGERALD to the President's counsel:

If we are to assume that the various allegations as to obstruction of justice are in fact true, is it your contention that if the President tampered with witnesses, encouraged the hiding of evidence, and corruptly influenced the filing of a false affidavit by a witness, that these acts do not rise to the level of an impeachable offense?

Mr. Counsel RUFF. Mr. Chief Justice, this is something I won't have an opportunity to say very often, but I believe that Mr. Manager GRAHAM has, in fact, stated for you the essential of the role that this body must play. We will probably differ as to what the right answer to the question is, but as to the process and as to the question that must be asked, I think he stated it well.

I believe that the facts do not support the conclusions that are embodied in the question. But not only can reasonable people differ on the facts, but reasonable people may differ on the outcome. And if, indeed, reasonable people can differ, doesn't that mean, by the very statement of that proposition, that this body cannot meet its constitutional heavy mandate, which is to determine whether or not, whatever conduct you believe the President committed, as outlined by these managers over the last many days—can you legitimately determine that he ought to be removed from office.

And all I can do, I suppose, is to remind you, as I have too frequently, I am sure, that if you try to put yourself in the minds and the hearts of the men who created our system of Government, they wanted to know only really one answer to one question, as framed in many different ways, but the essence remains the same: Is there a sufficient danger to the state—danger to the state—to warrant what my colleagues across the aisle here have called the political death penalty. And I think the answer to that is no.

The CHIEF JUSTICE. This is a question from Senator WELLSTONE to counsel for the President:

To what extent should the views of the American people be taken into account in considering whether a President should be removed from office?

Mr. Counsel RUFF. Mr. Chief Justice, I think that the answer to that question is not the polls that you read in

the newspapers or that you see on your evening news, whatever those numbers may be; that is only one clue as to what the American people are thinking. And each of you knows the people in your jurisdiction far better than any polltaker does and that certainly I do.

But surely one way to test the ultimate question that I just described in response to the last inquiry from the Republican side of the House, is to ask yourself, on the basis of experience over the last year, on the basis of your experience in the political—and by that I mean political in the very best constitutional sense of the term as used by Alexander Hamilton—as to your sense of the political structure of this country and what the people are saying to you and what your sense of their needs is: Do they need the kind of cleansing that Manager BUYER spoke about?

I think the answer to that, if you look within the body of people you are most familiar with, must be no. This isn't to say that it is a popularity contest, that we ought to go out and have a referendum or another poll before you all decide on this. But surely the sense of the people, the will of the people, the belief of the people in this President's ability to govern must educate each of you, not mandate a result, but surely guide the result that you reach in this proceeding.

The CHIEF JUSTICE. This is a question from Senator COLLINS to the House managers:

> The President's counsel has made much of Ms. Lewinsky's statement that no one ''promised'' her a job for her silence. She did not testify, however, that no one promised her a job in return for a false affidavit—or, for that matter, that no one implied that she would get a job for her cooperation. Can you think of any reason why we should not call Ms. Lewinsky to help clarify such ambiguous testimony?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. That is an excellent question and really goes to the heart of some of the disputes.

I think as you read the testimony of Ms. Lewinsky, as you read some of the other areas of testimony, questions come to your mind. You would like to follow up, you would like to ask her a question, and that one comes out and flags you that that is a question that would like to be asked: No one promised her a job for her silence, and that is the testimony that she gave in response to a question in the grand jury.

But I believe this is a case in which actions speak louder than words. I think that actions and what took place and the commonsense understanding of what is happening here demonstrate the case that there was a false affidavit that was obtained and that was in conjunction with the obtaining of a job for Monica Lewinsky.

So I think that is a natural question, and I think that also if you read, if you look at the testimony of Monica Lewinsky, I think it is clear that the case is made that she was encouraged to lie and she was also encouraged to sign a false affidavit and she was also provided a job coincidentally at the same time.

I would like to take the opportunity, if I might, Mr. Chief Justice, in further answering a question that was raised earlier; it was on the false affidavit. That is, I think, related to the question as well.

During Mr. Kendall's presentation a few days ago, he made this statement:

> The idea that the telephone call [between Lewinsky and Clinton on January 5] is about that affidavit is sheer, unsupported speculation and, even worse, it is speculation demolished by fact.

This is the statement that Mr. Kendall gave the other day on this floor, as cited in the CONGRESSIONAL RECORD, summarizing his presentation that the idea that Clinton and Lewinsky talked about the affidavit ''is sheer, unsupported speculation and . . . demolished by fact.''

Well, the record demonstrates that Monica Lewinsky's testimony is that she had a conversation with the President on the telephone in which she asked questions about the affidavit. She was concerned about signing that affidavit. And according to Ms. Lewinsky, the President said, ''Well, you could always say the people in Legislative Affairs got it for you or helped you get it.'' And that is in reference to a paragraph in the particular affidavit.

Now, my question to Mr. Kendall is, Would you agree, Mr. Kendall, that your assertion that there is no support for it in the record is that you are totally rejecting the testimony of Monica Lewinsky as totally unbelievable? And once again you have a conflict that is presented in the testimony, and there is only one way to resolve it, and that is to hear from the key witnesses.

The CHIEF JUSTICE. This is a question from Senator LAUTENBERG to counsel for the President:

> Could you reply to the question put by the manager?

Mr. Counsel KENDALL. Mr. Chief Justice, let me address the first part of Mr. Manager HUTCHINSON's response; and that is, whether the statement by Ms. Lewinsky that ''Nobody ever promised me a job for my silence'' covered other possible promises to her. And it is quite clear, when you read all the interviews that were done of her by the independent counsel, all the grand jury testimony, that she unequivocally testified there were no promises made to her, there were no assistances given to her, that were in any way conditioned upon her testifying a certain way or giving a certain kind of affidavit. And she is unequivocal about that.

Now, in the statement that she made that I quoted, she does not say nobody ever did these other things, but she said that in her previous testimony. She uses the offer of a job as simply a proxy for anything that would connect the assistance she would receive with testifying in a certain way. There is simply no evidence anywhere in the record. And the independent counsel covered that with her in detail. She felt compelled to volunteer her statement at the end of the process because they had left some innuendo in the record that she had been provided assistance. But her testimony is unequivocal. I have quoted it.

Now, the only testimony in the record about linking the job to some assistance in the Jones case comes from the Linda Tripp audiotapes. And, again, Ms. Lewinsky could not be clearer in her grand jury testimony what she told Linda Tripp was false. There was no connection there whatsoever. Her proffer, which I put up on the board, was quite unconditional. And this you have in your materials. This is in her own handwriting: Neither the President nor Mr. Jordan nor anyone on their behalf asked or encouraged her to lie.

So with regard to the first part of Mr. Manager HUTCHINSON's question, there is simply no evidence, again, that any kind of assistance to Ms. Lewinsky was conditioned on her performance in any way in the Jones case.

Now, with regard to the affidavit, I stand on what I said before you on Thursday. And I want to be very clear about what Mr. HUTCHINSON's presentation was in chart No. 7 that I was responding to. And I think it is quite important to recall yesterday that a question was addressed to the House managers whether there were any statements contained in their exhibits which contained misrepresentations or omissions that, in the interest of fairness to justice, they would like to correct; and Mr. Manager HUTCHINSON said, ''We are not aware of any corrections that need to be made on any of our exhibits offered to the Senate.''

I would simply rest on the presentation. I am not going to take you through, again, the many errors in the charts. Those were not refuted in any way. They rested on their charts. I leave that to your judgment.

But with regard to chart 7, what Mr. Manager HUTCHINSON told you almost a week ago was that chart 7 was a summary of what happened on January 5: Ms. Lewinsky meets with her attorney, Mr. Carter, for an hour; Carter drafts the affidavit for Ms. Lewinsky; she calls the President; the President returns Ms. Lewinsky's call; and then they had a discussion about this draft affidavit.

The point of my demonstration through Mr. Carter's testimony and through his billing records was in fact that the affidavit had been drafted the next day. They could not have had a discussion about the affidavit on that date. And I think the record is quite clear on that.

The CHIEF JUSTICE. This is a question from Senator LOTT to the House managers:

> Do you have any comment on the answer given by the President's counsel with regard to the views of the American people?

Mr. Manager HYDE. Mr. Chief Justice, distinguished Senators, this is a

fascinating question. Edmund Burke was asked that once, and he said that a member of Parliament owes the highest degree of fidelity to his constituents, but he doesn't owe his conscience to anybody.

We have, or we have not, a representative democracy. We are not delegates who are sent here to weigh our mail every day and then to vote accordingly. Our work here is not an ongoing plebiscite. We are elected to bring our judgment, our experience, and our consciences with us here.

I have always believed—and I believe more firmly than ever; and this experience confirms me in that belief—there are issues of transcendent importance that you have to be willing to lose your office over. I can think of several that I am willing to lose my office over—abortion is one; national defense is another; strengthening, not emasculating, the concept of equal justice under the law. My life is devoted, as a lawyer—I have been on the Judiciary Committee; this is my 25th year—and equal justice under the law is what moves me and animates me and consumes me. And I am willing to lose my seat any day in the week rather than sell out on those issues.

Despite all the polls and all the hostile editorials, America is hungry for people who believe in something. You may disagree with us, but we believe in something.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we recess the proceedings for 15 minutes.

There being no objection, at 11:19 a.m., the Senate recessed until 11:36 a.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice. We will go approximately another hour, if questions are still available—and I assume they will be—and then we will break for about an hour for lunch.

The CHIEF JUSTICE. This is a question from Senator BIDEN to the House managers:

If a Senator believes that the President may have lied to the American people, his family and his aides, and that some of his answers before the grand jury were misleading or half-truths, but that he could not be convicted in a court of law for either perjury or obstruction of justice, is it the opinion of the House managers that his actions still justify removing the President from office?

Mr. Manager BARR. Thank you, Mr. Chief Justice. I have taken two public oaths in my career in the service of the people of this great land. One was as a Member of Congress; the other was as a U.S. attorney. As a U.S. attorney, it was my job on behalf of the people of the United States to prosecute cases against individuals and other entities that violated the Criminal Code of the United States of America. That Criminal Code, as you are well aware, includes the offenses of perjury and obstruction of justice.

That Criminal Code does not include the offenses of lying to one's family. That is not what brings us here today. What brings us here today is the belief by the House of Representatives in lawful public vote that this President violated, in numerous respects, his oath of office and the Criminal Code of the United States of America—in particular, that he committed perjury and obstruction of justice.

I can tell you, as a U.S. attorney serving under two Presidents, that I would prosecute these cases, because I did prosecute such cases. I prosecuted cases against people, including members of the body from which we as managers come, who appeared before grand juries and lied, who appeared before grand juries and misled grand juries, people who obstructed justice, people who tampered with witnesses in precisely the same way that this President has committed perjury, tampered with witnesses and obstructed justice.

We respectfully submit to the Senators of the United States of America assembled here today that these are prosecutable cases, that they are cases that have been prosecuted, and that the question before this body, we respectfully submit, in the House of Representatives' articles of impeachment, is not that the President lied to his family. What is before this body, we respectfully submit, as contained in the two articles of impeachment passed by the House of Representatives, is that this President violated his oath of office and committed the offenses of perjury and obstruction of justice, which we firmly believe on behalf of the people of the United States of America provide a sufficient basis on which this body, exercising its deliberative power and its legitimate jurisdiction, may find that this President, as people in courts of law similarly but not identically situated, are indeed found guilty and removed from positions of trust, as this President ought to be for committing the perjury and obstruction of justice —not lying to his family.

Thank you.

The CHIEF JUSTICE. This is a question from Senators SNOWE, MACK, CHAFEE, BURNS, and CRAIG to the House managers:

Before Ms. Lewinsky was subpoenaed in the Jones case, the President refused on five separate occasions—November 3, November 10, November 12, November 17, and December 6—to produce information about gifts from Lewinsky. The President's counsel argued the President was unconcerned about these gifts. If that is the case, why didn't he produce these gifts in November and December?

Mr. Manager ROGAN. Mr. Chief Justice, I thank the Senators for the question. This case needs to be looked at for the mosaic that it is.

There is a reason why the President never produced gifts. There is a reason why the President continued to give Ms. Lewinsky gifts. It is because he believed that she would never produce them. We know that from her testimony.

In my presentation to the Senate a week ago, I quoted from the transcript where she said, ''Nobody ever asked me to lie.'' But then she also said there was never any doubt but that ''we'' would deny the relationship if asked.

We see that throughout the entire proceeding. We see that before Monica Lewinsky's name appeared on the list—on December 5—on the witness list. And we especially see it after. In fact, Monica Lewinsky went to the President and said, ''I've been subpoenaed. They are asking for gifts. What should I do? Maybe I should give them to Betty.'' And the President said, ''Let me think about that.'' And we all know by now that within a few hours Betty Currie called Monica Lewinsky and came and retrieved the gifts, not to give them to the Jones lawyers pursuant to the subpoena, not to cooperate with the sexual harassment lawsuit; she took the gifts and she put them under her bed.

Members of this body, it begs common sense for any interpretation of that conduct to be somehow cooperative with the legal proceedings in the sexual harassment case. Every piece of this puzzle, when put together, demonstrates a very clear pattern of obstructing justice, not to cover up personal affairs, not to cover up an indiscretion, but to destroy Paula Jones' rights under the sexual harassment laws of this country to have her day in court. That is the ultimate question that this body is going to have to address.

Yes, reasonable minds can differ on this case as to whether the President should be removed office. But reasonable minds can only differ if those reasonable minds come to the conclusion that enforcement of the sexual harassment laws in this country are less important than the preservation of this man in the office of the Presidency. And that is the ultimate question that this body is going to have to answer. What is more important—the survival of Bill Clinton's Presidency in the face of perjury and obstruction of justice, or the protection of the sexual harassment laws in this country?

And imagine, every victim in the workplace will be waiting for your answer.

The CHIEF JUSTICE. This is from Senator DASCHLE to the House managers:

Will you agree to arrange to have prepared a verbatim, unedited transcript of any debriefing which may occur with Ms. Lewinsky for immediate distribution to the Senate? And will you agree also to provide for the inclusion of any such debriefing of representatives of the Senate, one selected by the majority and one by the minority?

Mr. Manager MCCOLLUM. Mr. Chief Justice and Members of the Senate, it is not our intent to be doing a deposition, a formal presentation, a preparation for the Senate, if we talk to Ms. Lewinsky. It is our intent to do what any good attorney would do in preparing to go to trial, presuming—we don't

know that you are going to allow us to have witnesses—but presuming we are going to be able to depose and have witnesses, and that is to meet with the witness, talk with the witness, and prepare the witness. And any good attorney who does that is going to meet his or her witness in their own confidences, in their own quiet respite. We discover things that way. We are not prepared. No. The answer to your question is no, we are not prepared to say we are going to give you our work product, which is what that would be.

''Work product'' is a technical term of law which, for anybody who is out in the public, is what lawyers do all the time. And they work on their case, and they prepare what they are going to do, and then they present it. That is the system we have.

Somebody said—I think it was Mr. HUTCHINSON who said earlier—this is an adversarial position. The White House counsel will have their chance to talk to witnesses that they are going to present; we will have our chance to talk to ours. Then there is the opportunity for the depositions, which is what comes next, which is the formal proceedings when we both have a chance to talk with them. Then, of course, if you let us call them as witnesses here, they will be here, and they will get cross-examined, and examined, and all the questions you can imagine will be asked. That is the traditional American system of justice.

So, no, we would not give you our work product notes. We have no idea what would be in them. We don't think that is appropriate. We think that a lot is being made out of this. We attempted to do this a couple of weeks ago. We would have liked to have talked to her earlier. It has not worked, that we have been permitted to, for reasons that we are not sure. But the reality is, this is the normal process. We would talk to any other witness despite however the White House counsel wants to argue about it. They do the same thing.

I yield what time I have left to Mr. GRAHAM.

Mr. Manager GRAHAM. I would like to echo the work product analogy.

But let me just say this as directly as I know how to say it —that if this body as a whole believes we are going to do anything improper, then whatever rule you need to fashion to make sure we don't, you do it, because nobody should ever doubt whether a witness comes into this body in this case with anything other than testimony that was truthful. If you want to go down the road of the atmosphere that people were approached and how they were treated about being witnesses, let's go down that road together. Let's bring in people in this body and let's see how they were approached when they were asked to participate in this trial, what the atmosphere and the mood was, when it comes to their time to be identified as witnesses.

So I would just say as strongly as I know how that if you have any doubt about us and what we are up to, you fashion rules so we do not create an unfairness in this body; but please, when we ask for witnesses and we raise doubt about how people may have been treated, that you give us the same opportunity to explore the moods and atmosphere of those witnesses.

The CHIEF JUSTICE. This question is to the House managers from Senators MURKOWSKI, GREGG, GRAMS, THOMAS, CRAPO, THOMPSON and HATCH:

The President's counsel rely upon the President's statements in many instances. Therefore, the President's credibility is at issue. Is the President's credibility affected by the fact that, until the DNA evidence surfaced, the President denied any improper relationship with Ms. Lewinsky?

Mr. Manager ROGAN. Mr. Chief Justice, I thank the Senators.

First, I don't think it was a compliment to me from my colleagues that as soon as the issue of DNA came up, they all pointed to me and told me to come up and answer the question. I will do my best.

Obviously, as the triers of fact, Members of this body individually will have to make determinations respecting credibility of the President as well as the other witnesses. It is indisputable, however, that from January 1998, when he spoke at the deposition, until August 17, when he made a quasi-admission before the grand jury, there were intervening factors that required him to change his position.

We saw from the moment the story first broke in the press about Monica Lewinsky the President making denials in the most emphatic of ways, and not only doing it repeatedly himself but sending out his Cabinet and his aides and his friends to do it on his behalf. That continued up until the eve of the deposition. Was it because the President suddenly had a change of heart? Was it because his conscience was suddenly bearing down upon him? Or were there other reasons? Well, let's see.

Just before his deposition testimony, Monica Lewinsky decided to cooperate with the Office of Independent Counsel. Monica Lewinsky suddenly turned over a blue dress. And that is fascinating because, as you know from the record and you have heard from the presentations, the President was prepared to take Monica Lewinsky and trash her in a very public way until the dress was turned over to the FBI. Remember what he said to Sidney Blumenthal. He called her a stalker. He said that she was threatening him. But he no longer could make these presentations publicly or privately once he knew there was potential physical evidence.

So I think there are a number of factors Members of this body can look at with respect to credibility just from the cold record. But if that is not enough, if Members of this body are not satisfied that they are able to resolve these issues of credibility, then the way to handle this is to follow the dictates of the Constitution and our Framers who understood the value of trial and bringing witnesses forward, placing them under oath and giving the triers of fact the opportunity to see the witnesses, to hear their testimony, to gauge their credibility.

That is what the purpose of a trial is for. And the House managers entrust this body to make sure that at the end of the day this is more than a proceeding; this is an arena where the truth will be determined not just for our time but for history.

The CHIEF JUSTICE. This question is from Senator MURRAY to counsel for the President:

Could you reply to the comments of Manager ROGAN?

Mr. Counsel RUFF. The existence of DNA or any other evidence or any other events before the President's grand jury testimony had no bearing whatsoever on his determination which he carried out on that day in the middle of August to answer the grand jurors' questions truthfully. He did so. It may be that the managers can speculate about, well, there must have been some reason why in the middle of August, after some months of denying to the Nation and his family any misconduct, he changed his mind and told the truth. But there was one reason why he did that. Because he went before the grand jury for the United States District Court of the District of Columbia and told the truth.

Now, it has been suggested by many of the managers over the last day that the President was somehow anxious to—or contemplated the prospect of, as they put it, trashing Ms. Lewinsky. This issue was raised yesterday and has been raised again by Mr. Manager ROGAN. I think it is time to set that record straight.

Mr. Manager BRYANT yesterday, as he was discussing the Dick Morris issue, purported to recite from the independent counsel's referral and purported to describe a conversation between the President and Mr. Morris in which, to quote from Mr. Manager BRYANT, ''According to Morris, the President warned him''—that is, Mr. Morris, he warned the President—excuse me. Let me start before that.

Later the next day, the President has a followup conversation with Mr. Morris, in the evening, and says that he—

That is, the President—

is considering holding a press conference to blast Monica Lewinsky out of the water. But Mr. Morris urges caution. He says, ''Be careful.''

And that he warned the President not to be too hard on her.

Well, 180 degrees off from that description, let me read you what, in fact, the independent counsel's office referral says, and I am sure it was just a slip of the read that you heard yesterday.

The President had a followup conversation with Mr. Morris during the evening of January 22nd, 1998—

This is page 127 of the independent counsel's referral—

when Mr. Morris was considering holding a press conference to ''blast Monica Lewinsky 'out of the water.''' The President told Mr. Morris to ''be careful.'' According to Mr. Morris, the President warned him not to ''be too hard on [Ms. Lewinsky]''. . .

Close. Close. One hundred eighty degrees off. Beyond that, let me be very clear about one proposition which has been a subtheme running through some of the comments of the managers over the last many days. The White House, the President, the President's agents, the President's spokespersons, no one has ever trashed threatened, maligned or done anything else to Monica Lewinsky—no one.

The CHIEF JUSTICE. This is a question from Senators HUTCHISON of Texas, SNOWE, ALLARD, COLLINS and HATCH to the House managers:

The counsel for the President have said that the heart of this case is private consensual sex. A tenet of sexual harassment law, however, is that the implied power relationship between a supervisor (in this case, the President), and a subordinate (in this case an intern), is enough to constitute sexual harassment.

This is well settled in military law and is developing along this line in the civilian sector. In your view, how might acquittal of this case affect laws regarding sexual harassment?

Mr. Manager ROGAN. Mr. Chief Justice, the law of sexual harassment is a relatively new genre. If somebody wanted to make a case before the Congress had stepped in and improved upon the law, it essentially reduced women in the workplace, for instance, who had been harassed into what has been referred to as a ''he said-she said'' type of argument, and so the law has improved upon that type of argument because the law recognizes today that sometimes there can be evidence of a pattern of conduct, and that conduct is relevant to prove how somebody may have behaved.

Consider what would happen if victims of the workplace get a message from the Congress of the United States that what the President did with Paula Jones, or allegedly did with Paula Jones, is of no constitutional significance here. It would send a message to every woman in the workplace that if they have a complaint against an employer who is attempting to use a position of power and authority to pursue improper advancement, the message would be that you might as well just keep quiet about it because the person can lie in court and suffer no recrimination. First, they will probably never be discovered, because most of the time DNA evidence doesn't suddenly appear, but even if DNA evidence does appear to corroborate the victim, the message is that as long as he is appropriately apologetic and the lie was, after all, only about sex, it is of no import with respect to removing them from their job or having them suffer any legal consequences. I think that would be a horrible message.

The reason the law allows this pattern-of-conduct evidence is because sexual harassers operate in a unique way. They get their victims alone. They typically don't commit these crimes under the glare of klieg lights or in front of television cameras or where witnesses can testify. They get their victims alone for one reason—because they know through intimidation and fear one of two things will happen. Through intimidation or fear, the victim will submit; or through intimidation or fear, the victim will not submit but will keep their mouth shut about it.

What is the message to these victims who do brave losing their job, being destroyed publicly, having their reputations destroyed? What is the message to them if, when they come forward and they want to pursue their case, we take the legal view that somebody can perjure themselves, somebody can lie, somebody can obstruct justice, somebody in the greatest position of power in our country can take whatever steps are necessary to destroy that woman's claim in a court of law where she is entitled to pursue it if at the end of all of this we say: Well, you know, he was embarrassed, he did lie but it was only about sex? Lies in sexual harassment cases, Members of the Senate, are always only about sex.

The question before this body is, what type of validity are we going to give these laws and what sort of message are we going to send to victims in the workplace? I pray that we can put personal relationships aside with respect to how people individually feel about this President personally and how they feel about his administration and focus on what is the ultimate conclusion legally and what is the precedent that would be set if we turned a blind eye to this sort of conduct.

The CHIEF JUSTICE. This is a question from Senators BOXER, FEINSTEIN, LANDRIEU, MIKULSKI and MURRAY to counsel for the President.

Has Ms. Lewinsky ever claimed the relationship was other than consensual and was not Ms. Jones' case dismissed as having no claim recognized by law?

Mr. Counsel RUFF. No. And yes. Indeed, as Mr. Manager ROGAN has told you, and others before him on the managers' side, our sexual harassment laws and our civil rights laws are of critical importance to all of us. My colleague, Ms. Mills, spoke eloquently on that subject a couple of days ago.

But it is important to understand, I believe, with no sense at all that we are in any way diminishing the importance of those laws and of the rights of every American citizen to seek justice under those laws, that we are talking about a case in which the trial judge determined that on all the evidence that had been gathered and all the claims that plaintiff had made and all the discovery that had been taken, there was no case. That is justice. That is the way the system works. The plaintiff brings the claim, the process moves ahead, and a judge ultimately makes the decision. And this didn't have anything to do with what President Clinton said in his deposition on January 17. What the judge ruled was, first, that that evidence was irrelevant to her consideration; and then ultimately, in April of last year, that there simply was no case.

We accept the results of the justice system whether they go against us or whether they go for us. In either event, it is justice.

The CHIEF JUSTICE. This is a question from Senator THOMPSON to the House managers:

Is there any reason to believe that there is any relationship between the President telling Mr. Blumenthal that Ms. Lewinsky was a stalker and expressing his frustration about not being able to get his story out with the fact that shortly thereafter negative stories about Ms. Lewinsky, including the allegation that she was a stalker, began to appear in news articles quoting sources at the White House?

Mr. Manager HUTCHINSON. Well, I appreciate that question. And thank you, Mr. Chief Justice. Because I made a note of Mr. Ruff's statement that no one—and I believe he specified the President, his aides, or no one has ever trashed or spoken ill—used some other words—of Monica Lewinsky. It really caught me as striking, in light of the sworn grand jury testimony of Sidney Blumenthal. And, of course, he is testifying as to what the President told him. And, of course, in that conversation the President told Sidney Blumenthal, as described by Mr. Blumenthal, that: Monica Lewinsky came at me and made a sexual demand on me. I rebuffed her. The President said: I have gone down that road before, I have caused pain for a lot of people. I am not going to do that again. She, referring to Monica Lewinsky, threatened the President. This is the President's statement. It goes on and describes it; she was known as a stalker.

In my understanding that is trashing, that is speaking ill, that is being very critical and doing everything you can to basically destroy her reputation.

Now, why was he telling Sidney Blumenthal that? Was he trying to use Sidney Blumenthal to get the message out to the public and to the grand jury, who might hear this, that she is not a believable person? That the whole idea is that she came on to him, that threatened the President of the United States? I think—I don't understand Mr. Ruff's representation to the Senators that no one, including the President or aides, has ever trashed Monica Lewinsky.

Now, I think it is important also, at that particular point in time, the President knew that Sidney Blumenthal and John Podesta would be a witness before the grand jury. That was his testimony. That is what the President of the United States admitted to. He said he knew that they were going to be witnesses. And, clearly, that constitutes obstruction of justice; when he knows that they are going to

be a witness, he gives them false information knowing they are going to repeat it to the grand jury, and that is an element of one of the pillars of obstruction.

I want to come back to some things that have been said about the Jones case. First of all, it has been characterized as a ''no win'' case—that Judge Susan Webber Wright issued that order.

Well, if the truth had been known, what we know now about the relationship, about the pattern of conduct, would that have made a difference? And, of course, when those facts came out it was right before a decision by the Eighth Circuit Court of Appeals that might have reversed Judge Wright's order that the President of the United States made a decision he could settle this case for eight hundred and something thousand dollars.

What would have happened? Maybe Paula Jones would not have had to have gone through that many years of litigation if the truth had just come out.

But there was a pattern of obstruction of justice, of lying, of coaching witnesses, of tampering with witnesses, which ultimately led to a defeat of that case and the truth not coming out. But when it came out, it made a difference; it made a difference for that plaintiff in that civil rights case.

Senator HUTCHISON asked a question about whether the power of the position makes the difference in sexual harassment cases. Let me assure you, if there is any chief executive officer of any company, whether it was consensual or not, with an intern or a young person half of the officer's age and whether it was—whatever they termed it at that point, whether it was a subordinate employee—and that is the key language, ''subordinate employee,'' then, yes, Senator, it does make a difference, and that is the crux of many cases that are brought into court to protect women against sexual harassment in the workplace. I think it is a linchpin of this act that this Congress passed. So I think that when you look at the overall picture, there is that pattern of obstruction of justice.

Senator BIDEN asked a question, Would any prosecutor bring this case forward? Let me tell you, it would be easier—and I say this with great deference to the Senate—but it would be easier to win a conviction beyond any reasonable doubt, and I could win a conviction beyond a reasonable doubt in a court in this country on obstruction of justice because I know that common sense permeates a jury panel whenever they hear this case and the perjury—they are not going to buy, they are not going to accept what ''is'' is. They understand what these words mean, and common sense will apply. And I know that common sense exists in the Senate of the United States.

But let me assure you that this is a case that I would bring forth without any hesitation, and I believe the proof would demonstrate a conviction beyond a reasonable doubt.

The CHIEF JUSTICE. This question is from Senator KENNEDY to the counsel for the President:

> Could you reply to Mr. HUTCHINSON's allegations?

Mr. Counsel RUFF. I think it important because the question put to the House managers, Mr. Chief Justice, was whether there was some effort or some relationship between Ms. Lewinsky and a series of articles or stories that supposedly appeared in the early days following the revelation of this investigation. I think it is important to recognize what the real facts are here.

This was the point made at the very end of my testimony before the House Judiciary Committee on December 9. One of the members of that committee spoke at great length and quite heatedly about what he believed to have been a plan to disseminate unfavorable information in the press, and he submitted for the record a number of newspaper articles.

The articles that he submitted, which were largely spun off of one Associated Press story, did not contain two—at least two—statements that made it very clear that the accusation that there was some effort on the part of the White House to disseminate disparaging information were simply false.

In an Associated Press story of January 31, which was used by a member of the House Judiciary Committee as one of his examples of how the White House was supposedly coordinating such an attack, there was omitted the following portion. This is a statement by Ann Lewis, who is the White House communications director:

> To anyone who was saying such things about Ms. Lewinsky, either it reflected a lack of coordination or thought or adult judgment. We are not going down that road. It is not the issue. A discussion of other people is not appropriate.

That is on January 31. Retrospectively, when Ms. Lewinsky had already begun to cooperate with the independent counsel, the Los Angeles Times wrote the following:

> From the beginning, the White House has been careful about what it has said of Ms. Lewinsky. The week the Lewinsky story broke in January, Clinton's press secretary, Mike McCurry, signaled the tone the White House would take by deflecting questions about whether the 24-year-old intern was less than stable.

Mr. McCurry:

> ''I can't imagine anyone in a responsible position at the White House would be making such an assertion. I've heard some expressions of sympathy for what clearly someone who is a young person would be going through at a moment like this.'' And McCurry quickly signaled that the marching orders had not changed once Lewinsky made a deal with the independent counsel, Kenneth Starr, for immunity from prosecution.

I think it is important that the record be clear that the stories about which the managers were asked in their last question simply never reflected any plan, coordinated or uncoordinated, to do anything other than treat Ms. Lewinsky with respect.

The CHIEF JUSTICE. This question doesn't show which Senators are submitting it.

Mr. LOTT. Senator HATCH.

The CHIEF JUSTICE. This is a question from Senator HATCH:

> Isn't it true that Chief Federal District Judge Johnson ruled today—in an order that she authorized to be released to the public—that Ms. Lewinsky's immunity agreement, which requires her ''to make herself available for any interviews upon reasonable requests,'' compels her to submit to an interview with the House? What light does this shed on the earlier debate on this matter?

I am sorry, it is addressed to the House managers.

Mr. Manager BRYANT. Mr. Chief Justice, I think certainly having come from an experience of practicing law and learned so much over the years and trying cases and putting together cases in an ethical and appropriate fashion, to come into a political proceeding, and as we have dealt with this, and I think as the lawyers to my left had to deal with the same type of situation, in a political realm, not just in the Senate, but months and weeks before we came in to here, is very difficult.

What we have seen this morning is a completely innocent standard practice of sitting down with a potential witness before you have to list your witnesses Monday and deciding whether or not you want to use her.

They have talked about lawyers committing malpractice by not taking depositions. I submit it would be close to that if you don't talk to a witness before you call that witness. Certainly, while the OIC has had communication with her over some time, we have not. We have not had contact with any of these witnesses.

I alluded earlier to the White House and the other witnesses that work for the White House that we might be looking at calling. I must presume by this conversation in this area of questioning that they have not had any contact about this case with Ms. Currie and Mr. Podesta and Mr. Blumenthal, and that even a friend of the White House, Mr. Vernon Jordan. We are not asking we be privy to every time they say hello in the hallway to these people or may sit down and talk with them. We understand the realities of life. We simply just wanted that crazy idea that maybe we ought to talk to a witness before we decide whether or not we want to list that witness.

I think to answer that question—and I will sit down—Judge Johnson clearly vindicated this right to do that, to accomplish that through the immunity agreement. I apologize if we have offended the Senators. We certainly didn't intend to do that. We certainly didn't intend to break any rules about this, and we don't think we did.

Certainly, if we are going to go down that road, and if you see it is appropriate that we have a rule you can agree on, we would be happy to abide

by that, but we would simply like equal treatment with the other witnesses, also with the White House and their attorneys. Thank you.

The CHIEF JUSTICE. This question is to the House managers from Senators COLLINS and FEINGOLD:

On the basis of the President's and Betty Currie's testimony concerning their conversation on Sunday, January 18, 1998, have each of the elements of obstruction of justice under 18 U.S.C., section 1503, or witness tampering under 18 U.S.C., section 1512, been met? We are particularly interested in your analysis of whether the Senate can infer that President Clinton intended to corruptly influence or persuade Ms. Currie to testify falsely and the weight to be given Ms. Currie's testimony in that regard.

Mr. Manager HUTCHINSON. The answer is that, under 18 U.S.C. section 1503, there is a case for witness tampering in the conversation between President Clinton and Betty Currie.

I want to refer you to a case, United States v. Shannon, which is an Eighth Circuit Court of Appeals case decided October 12, 1987. And for you lawyers here, it has been Shepardized. It is good law, and it really puts this into perspective.

In the case, the defendant contended that the evidence did not support a conviction under 18 U.S.C. section 1503 because the Government did not prove that the witness in this case, Gray, was ever a witness before the grand jury or that the defendant knew that that person was going to be a witness before the grand jury. And this is what the court said:

This argument is . . . without merit. A conviction under section 1503 for attempting to influence a witness is appropriate so long as there is a possibility that the target of the defendant's activities will be called upon to testify in an official proceeding.

Now, this gentleman, this defendant, Mr. Shannon, went to jail. He made the defense that, ''Well, I didn't—you know, that person was never called as a witness, it was never an official proceeding,'' and it didn't fly. He was convicted. It was affirmed by the Court of the land and, presumably, he went to jail. Now, that is the law of the land in the criminal courts of our country. And so there would be a conviction under 18 U.S.C. section 1503.

In this case you have much more because, as I pointed out yesterday in reference to Betty Currie, Betty Currie was clearly a witness. They left that deposition knowing she would be a witness. The Jones attorneys went back and immediately worked on issuing a subpoena for her because they had to have her because the President asserted her name continually through that. The President knew she was going to be a witness. He came back and engaged in one conversation where he coached her testimony. He tampered with her testimony. It wasn't enough, so 2 days later he brought her back in again and did the exact same thing. The legal question is, As a prospective witness, is she covered under the obstruction of justice statute? The answer is, yes, because other people go to jail for exactly the same thing.

But I think we need to take a step back a moment. This U.S. Senate is not bound by the strictures of the U.S. Criminal Code. If I came in here today and said, ''Well, under the criminal procedures of the land, I'm entitled to bring witnesses and I'm entitled to cross-examine, and I'm entitled to do this, and we need to follow the criminal procedure code,'' you would say, ''No. This is the Senate of the United States.'' And you would rightfully say that. You set your own rules in this.

And the same thing is true with the criminal law of the land. I think that we make a criminal case for obstruction of justice that can be prosecuted, as other people are in every courtroom in this land. But that is not the burden here. The issue is, Is this an impeachable offense? And something that is much higher is at stake, and that is the public trust, the integrity of our Government, much more than in United States v. Shannon. And that is what you are dealing with.

So we can debate the criminal code all day—and we win all that—but we have to talk about the public trust, the integrity of our system. And that is what our country needs you to win for them.

The CHIEF JUSTICE. This question is from Senators THURMOND and BUNNING to the counsel for the President:

If there was no case and the White House accepted the results of the justice system, why then did the President pay nearly $1 million to Paula Jones?

Mr. Counsel RUFF. I say this with all due respect, truly. As I think everyone knows in this Chamber, and outside this Chamber, who has practiced law, litigated difficult cases, the judgment of a defendant to settle a case, to pay whatever sum may be required to settle it, is, in all candor, I think, for all of us, not reflective of any belief that he was wrong, that the other side was right. It reflects in this case, very candidly, a judgment by the President, which he has stated publicly, that in the midst of the many matters that he is responsible for, including, I must say, this matter, as well as all those matters of state on which he spends his time and to which he devotes his energy, he could no longer spend any of that time and any of that energy on the Jones case.

I am so hesitant to say this, but I really believe—please take it in the spirit it is meant—that to ask whether the settlement of this case reflects substantively on the merits of Ms. Jones' claim is not fair. The merits of Ms. Jones' claim were decided by Judge Wright. She concluded that there were none. And I really do believe that to ask whether the President's decision to settle is somehow a reflection on the merits, contrary to those reached by Judge Wright, is simply not the case.

The CHIEF JUSTICE. This is a question to the White House counsel from Senators JOHNSON and LEAHY:

A few minutes ago, Manager HUTCHINSON stated that he would be more confident of obtaining a conviction for obstruction of justice in a court than he is in the Senate. Can that statement be reconciled with the following exchange that occurred on the Sunday program ''This Week'' on January 17, 1999, in which Manager HUTCHINSON was asked, ''On the case that you have against the President on obstruction of justice, not the perjury, would you be confident of a conviction in a criminal court,'' and Manager HUTCHINSON said, ''No, I would not''?

Mr. Manager HUTCHINSON. Mr. Chief Justice——

The CHIEF JUSTICE. It's addressed to the President's—is it the President's counsel? It is addressed to the President's counsel.

Mr. Manager HUTCHINSON. I believe under your ruling yesterday I can't object to questions.

The CHIEF JUSTICE. That is correct.

Mr. Manager HUTCHINSON. I would——

Mr. LEVIN. Objection.

Mr. REID. Objection.

Mr. LEVIN. I object to this, if he is unable to object, to make an objection in any other form.

The CHIEF JUSTICE. The Parliamentarian advises me that the manager may make an objection to the question being answered.

Mr. REID. Nothing being answered.

The CHIEF JUSTICE. I have second thoughts, frankly. That ruling is based on a very Delphic, almost incomprehensible statement that Salmon Chase made during the trial of Andrew Johnson. And I think the correct response is that the managers do not have a right to object to a question by the Senator. So I rule the objection out of order.

Mrs. BOXER. Regular order.

Ms. Counsel MILLS. I just wanted to address, for a second, Manager HUTCHINSON's comments with regard to 1503. And he cited a 1987 case. In 1995, I think, as we talked a little bit about, and the House managers had discussed, Aguilar came down. And in that case the issue was, Was there sufficient nexus between the actual conduct of the person involved and the proceeding? And in particular, I am just going to read to you for 1 minute from the case law.

The Government argues that respondent ''understood that his false statements would be provided to the grand jury'' and that he made [these] statements . . . to thwart the grand jury investigation and not just the FBI investigation. . . . The Government supports its argument with . . . the transcript . . .

They go through the discussion that was between the judge and the agent in which the judge specifically asked whether or not he was a target for the grand jury investigation, and the agent responded:

There is a grand jury meeting. Convening I guess that's the correct word. . . . [E]vidence will be heard . . . I'm sure on this issue.

So, in other words, the person making the statement knew at that point that there was potentially the possibility that his testimony would be presented to the grand jury, and the court

ruled, as I talked to you a little bit about during my presentation before, that that was an insufficient nexus for there to prove a violation of 1503.

The CHIEF JUSTICE. This question is from Senators HELMS and STEVENS to the House managers.

Do you have any comment upon the answer just given by the President's counsel?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

First, I want to thank Ms. Mills for the courtesy she extended to me just a moment ago. And in our exchange, and Mr. Chief Justice, what I started to state my objection was, was really not to the question at that point, but I was just going to make the reference to the anticipated answer that the statement on ''This Week with Sam and Cokie'' was not exactly a part of this record. We are to be debating the facts of this case, and Ms. Mills was kind enough not to go into that. I think she was going to make the point that the answer I made was in reference to the need to call witnesses; that how confident can you be in any case without calling a witness so the jury can hear it?

Let me go back to what Ms. Mills said. She did cite the United States v. Aguilar, and I wish the Chief Justice—since he wrote the opinion—could give us a lecture on that particular decision. I feel maybe we should not be talking about this. But I read that opinion as totally consistent with the United States v. Shannon and that the law is clear, that if this body were to apply 18 U.S.C., section 1503, that a conviction would obtain, but again this is a body gathered for the purpose of consideration of an impeachable offense.

I also yield to Mr. GRAHAM on that point.

Mr. Manager GRAHAM. This is Saturday at 12:30 and a lot of people are probably watching with interest what is going on. Let's talk about the law just for a moment in a way that we all can understand when this thing is over with.

It is a long time since I have been in law school, but I liked the exchange between the professor and the students because you kind of understood what the law was about at the end of the day. Witness tampering is designed—the statute is designed to do what? As Senator BUMPERS and I would say in Arkansas and South Carolina, ''messin' with people.'' We can elevate that a little bit and say that the witness tampering statutes that we are talking about here are designed to make sure we get to the truth. Section 1512 is in the conjunctive, part (B): ''Whoever knowingly uses intimidation or physical force.''

That is one thing you don't want to happen here. You never want anybody to go up to a potential witness and threaten through force or intimidation to tell something that is not true. So that is out of bounds. That is illegal.

Or ''corruptly persuades''—now, what does that mean? There are some cases that talk about what that means. That means if the person has an intent, an evil intent or an improper purpose to persuade somebody without force or intimidation, that that is a crime.

Or listen to this: ''Engages in misleading conduct toward another person with the intent to influence or prevent the testimony of any person in an official proceeding.''

What are we getting to there, ladies and gentlemen? What the law says, if you go to a person who likes you, who is your friend, who trusts you, and you try to get them to tell a story—through misleading them—that is not true, that is a crime.

The marvelous thing about the law is that it is based in common sense. It is very obvious to us we don't want somebody to tell a story that is not true. It is also obvious to us that we don't want to take personal relationships and misuse them to get false testimony out into a courtroom.

So if you go back to your secretary—who trusts you, who likes you, who admires you—and you try to mislead them by telling a scenario that is not true, and you believe that they may appear in court one day, what you have done is very wrong, because what you have done is you have planted the seed of a lie in a way that we say is illegal.

So, if you believe the President of the United States was not refreshing his memory when he told Betty Currie, ''She wanted to have sex with me and I couldn't do that. I never touched her, did I, Betty?'' If you believe that is not to refresh his memory, if you believe that was misleading, and you believe that he had reason to believe she was going to be a witness because of his own conduct, then he is guilty.

The CHIEF JUSTICE. This question is from Senator KERREY of Nebraska to the counsel for the President.

Could you elaborate on your comments about the settlement of the Jones case, focusing on the reality, for example, that corporations in this country routinely settle cases they regard as utterly without merit, simply to spare the costs of defense, public embarrassment, and for other reasons?

Mr. Counsel RUFF. Mr. Chief Justice, I think far better than I did, the Senator from Nebraska has already elaborated on my answer. I think all of us who have been involved, either as lawyers or as parties, unhappily, in litigation know the burden that it imposes, and one can only imagine—I am barely able to—a special burden that it places on a President to be immersed in this kind of litigation.

We take, I think, as a basic understanding in our jurisprudence that, as a matter of law, the settlement of a case is not probative of any belief on either side about the strengths or weaknesses, but what it is, as a matter of law, is probably less relevant than what it is to this body or to the American public's perception.

But underlying the law about what one can do in litigation in using a decision to settle is, I think, a commonsense judgment that everybody, whether it be a large corporation or individual or the President of the United States, makes a judgment about where his or her resources should be expended—and I don't mean simply resources in terms of dollars, although they are secondly important—but resources in terms of energy, time, worry, interference with the day-to-day business that all of us have to conduct.

And I think it is fair to say that it is those factors, those very commonsense factors, the ones we would all weigh, in different circumstances at different settings if we were caught up in litigation, that inform your judgment about what you should or, in my judgment, should not take from the fact that the President settled this case.

The CHIEF JUSTICE. This question is from Senators NICKLES, WARNER, HELMS, INHOFE, and THURMOND to counsel for the President.

Members of the armed services are presently removed from service for improper sexual conduct and/or for perjury. If the President is acquitted by the Senate, would not it result in a lower standard of conduct for the Commander in Chief than the other 1.3 million members of the armed services?

Mr. Counsel RUFF. Mr. Chief Justice, this, of course, is a question legitimately asked but I also think legitimately answered no. We all understand entirely what rules are imposed on members of the armed services. Indeed, every member of the Federal civil service, every member of a private company, when they engage in certain conduct, may be sanctioned for it.

In the military, I understand—as do the Senators who have much greater personal and institutional experience with our Armed Forces than I—the importance of maintaining due order and discipline in the armed services, and also the importance of believing that nothing that the Commander in Chief does or says should ever undermine the strength of our Armed Forces, their cohesiveness, or their belief in the rules and integrity of the rules that govern them.

But, that said, A, I do not believe, as a matter of what will flow from an acquittal of the President, who is, indeed, Commander in Chief, that that will in fact undermine the good order and discipline of the Army. But if I am wrong in some fashion about that, if my understanding of the process is flawed—and it may well be—we, nonetheless, have to ask the question which I think is implicit in the question that was put to me: Because of the rules that apply to members of the Armed Forces, does it follow that because a sergeant, or a lieutenant, or a general, or an admiral will suffer in his career, that we must go back to the framers who wrote the impeachment clause and say they must have expected that the Commander in Chief, the President, would be removed for the same conduct? They had an Armed Forces then. Indeed, they were probably more intimately involved

with that, having just come through the Revolution, than Presidents and leaders of the country have been in the following 210 years. They surely understood that there was a constitutional and societal difference between the President in his role as Commander in Chief and the President in his role as the leader of the country, on the one hand, and those to whom rules of discipline had to apply in order to secure the strongest and best Armed Forces that we could secure.

It is, in a sense, I suppose, not an easy answer to give, because members of the Armed Forces put their lives on the line, and we want them to feel that they are being treated fairly. But at the end of the day, it cannot be that the President of the United States is removable for conduct that would adversely affect a career of a member of the military.

There may be occasions on which the President engages in such horrific conduct that he ought to be removed, and the same would happen to an admiral, or a general, or the Chief of Staff of the Joint Chiefs, or the highest military member that you can contemplate. But that doesn't mean that this conduct is transposed from the world of the military into the world of the Constitution in such a way that the President, even if he is our Commander in Chief, should be removed from office, because I think that judgment would be inconsistent with the judgment made by the framers.

RECESS

Mr. LOTT. Mr. Chief Justice, I suggest that this would be an excellent time to take a 1-hour break for lunch.

There being no objection, at 12:44 p.m., the Senate recessed until 1:45 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

Mr. Chief Justice, we are ready momentarily to begin with the questioning period again. I believe the first question will come through Senator DASCHLE.

I do want to say to our colleagues that any Senator is entitled to propound a question on both sides, and so we will give you every opportunity to do that. Again, it is our intent to go today not later than 4 o'clock, and if additional time is needed for questions, it will have to go over until Monday. We have some questions that have already been propounded that we would like to put to one side or the other, but at some point I think we will have a sense that maybe the basic questions have been asked.

So if any Senator on either side feels strongly about a particular question, he or she may want to be thinking about how and when they insist that it be offered. But I think a lot of ground has been covered. I hope that within a reasonable period of time the questions that Senators have will be given and we will have a response, and then we will make a decision on how to proceed from there.

I yield, Mr. Chief Justice.

The CHIEF JUSTICE. This is a question from Senator BINGAMAN to counsel for the President.

When Samuel Dash resigned as adviser to the independent counsel, he wrote in the letter of resignation that he was doing so because the independent counsel had become an advocate and had ''unlawfully intruded on the power of impeachment which the Constitution gives solely to the House.''

In using his power to assist one party to the pending impeachment trial before the Senate, do you believe he has unlawfully intruded on the power of the Senate to try impeachments?

Mr. Counsel RUFF. Mr. Chief Justice, Senators, the independent counsel statute gives the independent counsel in some sense almost unbounded power to investigate the President and other high officials of Government. It does not give him and has never given him unbounded power even to the extent that he has become immersed in the impeachment proceedings in the House. For the statute itself says not you shall become the 436th Member of the House, not that impeachment is vested in the independent counsel, but that impeachment is vested in the House and trial in the Senate.

We were, obviously, dismayed at the role that the independent counsel chose to follow rather than simply sending information to the House that might bear on possible impeachable offenses but, rather, to drive his van up to the building and unload unscreened, undiluted boxes of information which thereafter made their way, at least in part, into the public domain.

But surely it was a shock to all of us, at least on this side, to learn yesterday evening that playing a role in the House proceedings had now become a role in this Chamber, that the independent counsel was using not only his powers of coercion but calling on the U.S. district court to assist him and, in turn, enabling the managers not simply, as they would have it, to do a little work product, to do a little meeting and greeting, to do a little saying hello and a little chatting with someone who may be a witness before this body but, rather, saying to this witness: I hold your life in my hands and I'm going to transfer that power to the managers for the House of Representatives.

The managers have said we are engaged in an adversary process here, and they themselves have talked long and loud today about letting them play out the process that any lawyer would play out preparing for trial. Well, no other lawyer that I know of gets to have a prosecutor sitting in a room with him and saying to the witness: Talk to these people or your immunity deal is gone and you may go to jail.

Now, we have been accused by Manager HUTCHINSON and others of always talking about process, of always falling back on process. Well, I suggest, Senators, that process is what our justice system is all about. Process is what we have always relied on to protect everyone against the vaunted power of the state in this case; not just the managers, but the state embodied in the independent counsel.

But in this case it is more than just a call for due process, for fairness, because it is going to have a direct and immediate impact on the facts as we learn them, as they learn them, and most importantly as you learn them. Can you imagine—can you imagine what it is going to be like for Monica Lewinsky to be sitting in a room with the 13 managers, or however many there are, and the independent counsel, and his lawyers, knowing the threat that she is under, knowing how she got into that room? Can we have any reason to believe that what comes out of that process will be the fair, unvarnished truth? Or will she, of necessity, be looking over her shoulder and saying I better not put one foot wrong because the independent counsel is sitting there watching, and he has already told me that this deal is gone if I don't cooperate with the House managers.

Process and truth, they are inextricably linked, but not—not if the independent counsel moves to that side of the room and becomes the moving force in the development of the truth and the facts as this body is entitled to know them.

Accuse us of talking about process if you will; accuse us, if you will, of falling back on process. We do it proudly because process is what this is all about, because process leads to truth. But not that way.

The CHIEF JUSTICE. This is a question from Senators SPECTER, FRIST, SMITH of New Hampshire, INHOFE, LUGAR, BROWNBACK, ROTH, and CRAPO to counsel for the President:

In arguing that an impeachable offense involves only a public duty, what is your best argument that a public duty is not involved in the President's constitutional duty to execute the laws? At a minimum, doesn't the President have a duty not to violate the laws under the constitutional responsibility to execute the laws?

Mr. Counsel RUFF. It can't be. It can't be that if the President violates the law and thus violates his duty faithfully to carry out the laws, he is removed from office. Because that would literally encompass virtually every law, every regulation, every policy, every guideline that you could imagine that he is responsible for carrying out in the executive branch. If that were so, it would have been very simple for the framers to say the President shall be impeached for treason, bribery and failure to carry out his oath faithfully to execute the laws. They wrote that. They could have incorporated it into the impeachment clause if they had wished, and they chose not to.

So that if, in fact, you suggest that a failure to faithfully execute the laws

inevitably leads to a decision that an impeachable and removable offense has been committed, I suggest with all respect that you have simply eliminated the impact of the words ''treason, bribery and other high crimes and misdemeanors.''

Now, you may well judge within that setting—that is, within that constitutional standard ''other high crimes and misdemeanors''—that some particular violation of law warrants removal. But it surely can't be, just looking back at what the framers did and what the words themselves mean, that any violation, even if you were to find one, must lead you to conclude that having therefore violated his responsibility to faithfully execute the laws, removal must follow.

The framers knew what the other parts of the Constitution said, and they specifically chose the words they chose, intending that they cover only the most egregious violations of the public law and public trust that they could conceive of.

The CHIEF JUSTICE. This is from Senator GRAHAM to counsel for President Clinton:

In the event the Senate determines the removal of the President is not warranted, are there any constitutional impediments to the following action: (1) a formal motion of censure; (2) a motion other than censure incorporating the Senate's acknowledgement and disapproval of the President's conduct; (3) a motion requiring a formal Presidential apology or any other statement accepting the judgment of the Senate; or (4) a motion requiring the President to state that he will not accept a pardon for any previous criminal activities.

Assuming that one or more of the above actions are constitutional, are there any other serious policy concerns about the advisability of the Senate formally adopting a legislative sanction of the President that falls outside the scope of the constitutional sanction of removal from office?

Mr. GRAMM addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Texas.

Mr. GRAMM. Mr. President, I would like the record to show that that was Senator GRAHAM of Florida. (Laughter.)

The CHIEF JUSTICE. The record may so show.

Mr. Counsel RUFF. Senator GRAMM, my apologies. I assumed since Senator DASCHLE sent it up it was probably from this side, but I am glad you clarified the record.

That question probably requires much more constitutional learning to answer in great detail than I possess, but let me give it a try. And the easiest one for me to answer is the fourth part: Would it be appropriate for, in some fashion, for the President formally to state that he would not accept a pardon?

I have stated formally on behalf of the President in response to a very specific question by the House Judiciary Committee that he would not, and, indeed, we have said in this Chamber, and we have said in other places, that the President is subject to the rule of law like any other citizen and would continue to be on January 21, 2001, and that he would submit himself to whatever law and whatever sanction or whatever prosecution the law would impose on him. He is prepared to defend himself in that forum at any time following the end of his tenure. And I committed on his behalf, and I have no doubt that he would so state himself, that he would not seek or accept a pardon.

I will not even begin to tread on the territory that is the Senate's jurisdiction and the issues that it takes unto itself, much less give it advice about what it is possible or not possible to do, except to venture this. I see no constitutional barrier, certainly, to the Senate's passing a censure motion in whatever form it chooses—whether adopting language from the articles or creating language of its own. We might at the end of the day disagree with you about whether the language is justified or whether it accurately reflects the facts, but there is nothing in the Constitution, I believe, that prevents this body from undertaking that task.

With respect to a formal acknowledgment, there I suppose the interplay between the legislative and the executive branch becomes more tenuous. But to the extent that whatever the Senate chooses to say in such a document needs to be acknowledged or recognized by the President, that can be done without trenching on the separation of powers in that special uncertain area between the legislative and executive branches. I have no doubt that some process can be worked out that meets the Senate's needs. I say this all in the sort of vast limbo of hypothesis, because obviously I am answering both somewhat off the cuff and without knowing what language we are talking about.

But the core position, as we see it, is that nothing stands in the way of this body from voicing its sentiments. Indeed, I have said in the House of Representatives that I thought a censure was an appropriate response, and the President has said he is prepared to accept the censure. I have no doubt, although that was said in the context of the proceedings in the House, it surely is applicable as well to anything that this body chooses to do.

The CHIEF JUSTICE. This is a question from Senator THOMPSON to the House managers:

Do you have any comment on the answer given by the President's counsel with regard to the Office of Independent Counsel?

Mr. Manager MCCOLLUM. Mr. Chief Justice, Senators, thank you for that question. It is our judgment—and I think a fair judgment—that we should be allowed and are permitted, under any of the rules normal to this, to request of the Office of Independent Counsel the opportunity to talk to Monica Lewinsky, which we otherwise apparently were not going to be able to have as a normal course of preparation.

It makes me wonder—with all of the complaints that are going on here from the White House attorneys about this and their desire not to have witnesses—what they are afraid of. Are they afraid of our talking to Monica Lewinsky? Are they afraid of the deposition of Monica Lewinsky? Are they afraid of what she might say out here? I don't think they should be, but they appear to be.

We are not doing anything abnormal. We are exercising our privileges, our rights. If it were a prosecutor and you had a prosecutorial arm, which you do in the case of the Independent Counsel Office, that had an immunity agreement, as there is in this case, you certainly would not hesitate if you had a recalcitrant witness who you needed to call to utilize that immunity agreement and have the opportunity to discuss the matter with that witness, and you certainly would not hesitate if you needed to use that immunity agreement to assure truthful testimony in any proceeding that was going on.

After all, that is the purpose of the immunity agreement. It means that the witness is probably much more likely to be telling the truth than under any other circumstances, which is why counsels frequently argue immunity agreements as a reason why a particular witness is more credible than they might otherwise be if it were not for that agreement.

So I think there is an awful lot being said today about our meeting that we want to have with Ms. Lewinsky to prepare her as a witness. I want to tell you all it is being done, in my judgment, with all due respect to those who are doing it, principally because of the concerns they don't want us to have that opportunity or they want to cast some aspersion or doubt, or whatever.

We are not about to do anything improper. We can assure you of that. We would never do that. We are going to follow regular order and do this as good counsels would do in good faith, and in no way would we wish to do it otherwise, nor have we. Thank you.

The CHIEF JUSTICE. This is a question of Senator BAUCUS to the House managers:

In view of the direct election of the President, his popularity, and short duration of his term, and in view of the fact that, as House Manager GRAHAM stated, ''reasonable people can differ in this case,'' please explain, precisely, how acquitting the President will result in an immediate threat to the stability of our Government.

Mr. Manager HYDE. Mr. Chief Justice, ladies and gentlemen of the Senate, I don't think anyone contends that if the President is acquitted that suddenly it is apocalypse now or the Republic will be threatened from without or from within. I think erosion can happen very slowly and very deliberately. The problem that I have is with this office being fulfilled by someone who has a double responsibility.

The first responsibility is to take care that the laws be faithfully executed. He is the only person in the country, in the world, who has that

compact with the American people. The other, of course, is his oath to preserve, protect and defend the Constitution. He is the national role model, he is the man, he is the flagbearer in front of our country. He is the person, his office is the person every parent says to their little child, ''I hope you grow up and be President of the United States some day.'' We do nothing as important as raising our kids, and the President is the role model for every kid in the country.

When you have a President who lies and lies and lies under oath—and that is the key phrase, ''under oath.'' I don't care about his private life or matters that are not public. But when he takes an oath to tell the truth, the whole truth, nothing but the truth and then lies and lies and lies, what kind of a lesson is that for our kids and our grandkids? What does it do to the rule of law?

Injustice is a terrible thing. The longer you live, the more you can encounter it. Injustice, abuse, oppression, and the law is what protects you; the law, having resort to an objective standard of morality in action. And when you are sworn to take care that the laws are faithfully executed, how do you reconcile the conduct of perjury and obstruction of justice with that obligation?

I have a suggestion. Let's just tear it out of the Constitution. Tear out that ''take care to see that the laws are faithfully executed.'' It is wrong. It is an example we are setting for millions of kids that if the President can do it, you can do it. What do you say to master sergeants who have their careers destroyed because they hit on an inferior member of the military? We are setting the parameters of permissible Presidential conduct for the one office that ought to gleam in the sunlight. And the kids, that is what moves me, the kids.

The CHIEF JUSTICE. This question is from Senators NICKLES, WARNER, CRAPO, HELMS, INHOFE, and THURMOND to the House managers:

Would you like to comment on the remarks of Counsel Ruff concerning the impact of an acquittal of the President accused of improper sexual conduct and/or perjury and obstruction on the Armed Forces?

Mr. Manager BUYER. Mr. Chief Justice, I would like to thank the Senators for the question, because I believe it is also insightful.

The question of double standards or establishing lower standards, I believe, is extraordinarily important. The defense asserted—and it is hard for me to believe—but they are asking you to set a higher standard for judges and a lower standard for a President who nominates them to you, asking you—they think that we can set a higher standard for law enforcement, yet establish a lower standard for the Chief Executive or the chief law enforcement officer that has the duty to faithfully see that the laws are executed; set a higher standard for military personnel, and then a lower standard for the Commander in Chief who must make the painful decisions to send them into battle.

Now, the precedents in impeachment trials here in the Senate, the judgment of the Armed Services Committee and the Senate regarding the standards for promotion, have been otherwise than that which Mr. Ruff has asserted.

We must confront the fact that the President is the Commander in Chief. And I believe that it is perfectly acceptable of the American people to demand of the military the highest standard, which also means that those of whom find themselves in positions of responsibility in the Pentagon of whom are in civilian leadership must also live by such exemplary conduct and standards. The high character of military officers is a safeguard of the character of a nation.

The Senate, who must ratify the officers' promotion list, has repeatedly found that anything less than exemplary conduct is therefore unworthy of a commission or further promotion. I recall when I first came to Congress in 1992, there were many making a big to-do over Tailhook. Remember? And it was serious. There are still remnants around of Tailhook because there are still those who are screening the officers' promotion. If you were within 100 miles of Tailhook, look out for your career. That needs to be put to bed.

Then I was given a duty to ensure that after Aberdeen broke and the sexual misconduct in the military—whether it was at Fort Jackson, Aberdeen, or at other places—I spent 18 months out on the road to ensure that the policies of the military were fair and the treatment of equal dignity in the workplace among men and women. We cannot forget that.

You see, we also must recognize and must be candid with the harsh reality that the officers and NCOs are human and not without fault, folly, and failings. I believe, though, it is the aspirations of high ideals that are important for each of us, but more so to the military in order to keep the trust and the public faith of the military. You see, a soldier, a sailor, an airman or marine is prepared to lay down his or her life to defend the Constitution. And it is the devotion and the fidelity to the oath without mental reservation that is the epitome of character.

Now, the President is not and should not be subject to the Uniform Code of Military Justice. And I concur with Mr. Ruff when he made that point. And the President is not an actual member of the military. But we have a unique system in the world. We have that civilian control of the military, and it works. But we also must recognize and be cognizant that the President, however, is at the pinnacle, he is at the top of the chain of command. And that is what I learned about, being on the road for 18 months, and How do we make corrections? and How do you set the proper dignity in the workplace?

It doesn't matter if it is your own office or, in fact, if you are the President as Commander in Chief. Whoever leads you sets the tenor of those who must follow. You see, the message is that the military personnel do look to the Commander in Chief to set the high standard of moral and ethical behavior. The military personnel are required to set a high standard of conduct in order to set the example to those they lead. Adherence to high standards is the fabric of good order and discipline. When military leaders fall short of this ideal, then there is confusion and disruption in the ranks. And today many do see a double standard. There is a double standard because the Commander in Chief has allegedly conducted himself in a manner that would be a court-martial offense for military personnel having been alleged of the very same thing.

The President's actions have had an intangible and coercive impact upon military personnel. To turn a blind eye and a deaf ear to it would be shame on us. The question soldiers and sailors ask is: I took an oath to swear to tell the truth. And I also took an oath to uphold the Constitution. How can this President take the same oath and not be truthful and remain in office? If I were to have done what the President did, I would be court-martialed.

You see, we also have to recognize that each of the services are recruiting young people all across the Nation. At boot camp they infuse these young people with the moral values of honor, courage and commitment, and they're teaching self-restraint, discipline and self-sacrifice. Military leaders are required to provide a good example to those young recruits, yet when they look up the chain of command, all the way to the Commander in Chief, they see a double standard at the top. Again, it is the President that sets the tone and tenor in the military, just as he does for law enforcement.

I believe the President has violated this sacred trust between the leaders and those of whom he was entrusted to lead. I also spoke in my presentation that it was the President's self-inflicted wounds that have called his own credibility into question not only in his decisionmaking process, but with regard to security policies.

The CHIEF JUSTICE. The Chair has the view that you have answered the question.

Mr. Manager BUYER. Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. This is a question from Senators TORRICELLI and KOHL to the President's counsel:

At the outset of the House proceedings, a member of the majority, now a manager, stated: ''The solemn duty that confronts us requires that we attain a heroic level of bipartisanship and that we conduct our deliberations in a fair, full and independent manner. . . . The American people deserve a competent, independent, and bipartisan review of the Independent Counsel's report. They must have confidence in the process. Politics must be checked at the door.''

In evaluating the case against the President, should the Senate take into account: (a) the partisan nature of the proceedings in the House, or (b) the public's ''lack of confidence'' in the proceedings thus far?

Mr. Counsel KENDALL. Mr. Chief Justice, I think that this body has got to take into consideration what brought these articles here, and that is the action both of the independent counsel and the House of Representatives. I think when fairly considered, when you look at the actions of both, you find an absence of fairness and bipartisanship.

The independent counsel investigated this case for 8 months. It developed every bit of evidence it could that was negative, derogatory, or prejudicial, and it put them into those five volumes. It did not pursue exculpatory leads. It did not follow up evidence that might lead to evidence of innocence. And it downplayed, when it came to write the referral, significant testimony which was exculpatory or helpful.

I think the independent counsel's process was really epitomized by Ms. Lewinsky's statement that nobody asked her to lie or had promised her a job for silence. You see, the independent counsel didn't bring out that testimony. In fact, it came out when the independent counsel was through examining Ms. Lewinsky in the grand jury. I want to read you a very short part of that, page 1161 of the appendix.

Independent counsel prosecutor says, ''We don't have any further questions,'' and a grand juror pipes up, ''Could I ask one?''

Monica, is there anything that you would like to add to your prior testimony, either today or the last time you were here, or anything that you think needs to be amplified on or clarified? I just want to give you the fullest opportunity.

Here is what Ms. Lewinsky says:

I would. I think because of the public nature of how this investigation has been and what the charges aired, that I would just like to say that no one ever asked me to lie and I was never promised a job for my silence. And that I'm sorry. I'm really sorry for everything that's happened.

Now, we requested the independent counsel, before he sent the referral to the House of Representatives, for an opportunity to review that. We were denied this.

I think if you compare what happened here with what happened in 1974 when Special Prosecutor Jaworski sent a transmission of evidence to the House Judiciary Committee, the comparison is very revealing. Then Special Prosecutor Jaworski sent only a road map of the evidence, a description of what was in the record. Judge Sirica reviewed that at a hearing where White House counsel were present. Judge Sirica then said it was a fair, impartial summary and transmitted it on to the House Judiciary Committee. Here, without review either by the presiding judge or the grand jury, a referral was sent to the House that was a one-sided, unfair prosecutorial summary.

When the House managers speak of the need for discovery, they have no such need. Everything prejudicial that could be found through an unlimited budget and seemingly endless investigation has been found and put there, tied up with a red ribbon for you.

In terms of bipartisanship in the House, I think that speaks for itself. I don't think this was a bipartisan process. I don't think it was a bipartisan result. I think, though, it rests with this body to try the case. It is clear under the Constitution that this body has the power, the sole power, to try impeachment. The Chief Justice in the Nixon case made that very clear.

I am not going to comment on the independent counsel's assistance to the House manager with Ms. Lewinsky. I think that is for you to decide whether that is consonant with how you decide the case ought to be tried. But I think that the presentation of the articles to this body has been neither fair nor bipartisan.

The CHIEF JUSTICE. This is a question from Senator LOTT to the House managers:

Do you have any comment on the answer just given by the President's counsel?

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, I welcome this opportunity to fill in a considerable gap in the record.

Mr. Counsel Kendall said earlier today or perhaps yesterday—it was yesterday—''We never had a chance to call witnesses ourselves, to examine them, to cross-examine them, to subpoena documentary evidence, at no point in this process.''

On October 5, 1998, the House Judiciary Committee passed House Resolution 581 by voice vote, the impeachment inquiry procedure, which included the right to call witnesses for the President.

On October 21, the House Judiciary Committee staff met with Mr. Ruff, Mr. Kendall, and Mr. Craig. At that time, the Judiciary Committee staff asked the White House to provide any exculpatory information, provide a list of any witnesses they wanted to call, without result.

On November 9, the House Judiciary Committee wrote to Messrs. Ruff, Kendall, and Craig and again informed them of the President's right to call witnesses.

On November 19, Independent Counsel Starr testified 12 hours before the House Committee on the Judiciary. President's counsel was given the opportunity to question the independent counsel. He did not ask a single question relating to the facts of the independent counsel's allegations against the President. Now, the Democrats have Mr. Kendall, they had Abbe Lowell; we had Dave Schippers. That is not an invidious comparison.

On November 25, I wrote a letter to the President asking the President, among other things, to provide any exculpatory information and inform the committee of any witnesses it wanted to call, without success.

On December 4, two working days before the presentation of the President to the Judiciary Committee, counsel for the President requested to put on 15 witnesses. The White House was allowed to present all 15 witnesses. Not a single one of those was a fact witness.

Lastly, I quote from a letter from Mr. Kendall to Mr. Bittman. It is in volume 3, part 2 of 2, page 2326.

That you now request we submit exculpatory evidence is perfectly consonant with the occasionally ''Alice in Wonderland'' nature of this whole enterprise. I am not aware of anything that the President needs to exculpate.

The CHIEF JUSTICE. This question is from Senator LEAHY to the White House counsel:

The managers argued in response to a previous question that would set a bad example for the military to acquit the President. Given that argument, how could you reconcile the statement by Manager HYDE after Caspar Weinberger was pardoned by President Bush of multiple criminal violations, including perjury, that, ''I'm glad the President had the chutzpa to do it. The prosecution of Weinberger was political in nature, an effort to get at Ronald Reagan. I just wish us out of this mess, the 6 years and this $30 or $40 million that has been spent by independent counsel Lawrence E. Walsh''?

Mr. Counsel RUFF. The question, in virtually every respect, speaks for itself.

But I would make this point because I think it fleshes out a bit my earlier answer and responds in some fashion to the argument made by the managers on this very issue. I was probably too lawyerly, as is my wont, in responding to the earlier question on this issue by Senators WARNER and THURMOND, because I think the one point that needs to be made in the context of Senator LEAHY's question which goes to the leadership of the Secretary of Defense and the issue of what it means to undertake the removal of a President, the distinction that I think we all need to hold on to that I probably glided over too rapidly in my earlier answer, is that the President of the United States is elected by the people of the United States.

He appoints the Secretary of Defense; he appoints the officers in the military; he appoints the judges. And the Senate plays a role in that process by approving his choices, or occasionally not approving his choices. But there is only one person who is put in his job with the voice of the people, and however we may be concerned, as rightly we should, if that person oversteps the bounds either of his office or his personal conduct, to say that there is some one-to-one, or any other number you can think of, comparison between the impact of enforcing the law on those civilian and military personnel who serve our country and the very different question of whether the voice of the people will be stilled by removing the President is the point on which I think this body needs to focus.

The CHIEF JUSTICE. This question is from Senators KYL and MACK to counsel for the President:

Mr. Ruff said President Clinton was never asked in the grand jury whether everything he testified to in the Jones deposition was true. If he were asked, would he say it was all true? Would the President be willing to answer an interrogatory from the Senate asking that question?

Mr. Counsel CRAIG. Senator, it is true that he testified that he tried to be truthful in the Jones deposition, that it was his purpose to be accurate in the Jones deposition. He tried to navigate his way through a minefield without violating the law, and believes that he did. There is no statement in that testimony in the grand jury that reaffirms, ratifies, and confirms all of his testimony in the Jones deposition.

Now, we would be happy to take questions and get responses to you, consult the President, if you would like to submit them.

The CHIEF JUSTICE. This is a question from Senator MURRAY to the White House counsel:

Has Ms. Lewinsky ever claimed that she was sexually harassed by the President?

Mr. Counsel KENDALL. Mr. Chief Justice, Ms. Lewinsky has made no such claim. What happened between the President and her was improper, but it was consensual. To say that does not excuse it or sugarcoat it or justify it, but it does, I think, put it in the proper context. She has never claimed that she has any evidence at all relevant to sexual harassment by the President. When the President—and I went through this on Thursday in respect to the obstruction of justice allegation, about the President stating that she could file an affidavit. The President and Ms. Lewinsky reasonably believe that she could have filed a limited but truthful affidavit.

And I think you have to look to the fact that the Jones case was not a class action. It was a suit only about what Ms. Jones claimed happened in May 1991 in a Little Rock hotel room. The December 11 ruling on discovery was a ruling not only on admissibility, but discovery. The President believed that an affidavit—a truthful affidavit—might be successful—not that it would, but that it might be.

Now, in filing such an affidavit, in preparing it, no particular form was necessary. There was nothing to dictate what had to go in and what had to go out of it. There were many witnesses on the witness list. The end of discovery was approaching, and there was at least some chance, they thought, that a factual affidavit, which was limited, might accomplish the purpose. And I think this is confirmed by the fact that when Judge Wright considered whether to order Ms. Lewinsky's deposition, she issued a ruling on January 29 saying that the deposition would not go forward because evidence from Ms. Lewinsky would not be admissible at the Paula Jones trial because it was both irrelevant to the court allegations and it was inadmissible as extrinsic evidence of other facts.

So I think that Ms. Lewinsky had nothing whatsoever to offer on the critical issue in the Paula Jones case, which was an issue of sexual harassment.

The CHIEF JUSTICE. This is a question by Senator SHELBY to the House managers:

Would a verdict of not guilty be a stronger message of vindication for the President than a motion to dismiss, or, in the alternative, a motion to adjourn? And what are the constitutional implications, if any, if a motion to dismiss prevailed, short of concluding the trial?

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, there are various options. It is really a misdirected question, if I may say, to ask us to suggest the consequences of solutions to this dilemma that we are in. I think the beauty—and that is not the word—I think the advantage of proceeding with the articles of impeachment is it is consonant with the Constitution. It is simple; it is clean: either guilty or not guilty.

The consequences of that verdict, of course, are up to any individual who casts a vote. Now, I have heard the word ''censure'' sometime before. You gentlemen and ladies do anything you want to do. It is your power, it is your authority, it is in your yard, but you have to deal with the Constitution, no matter what you do.

You have a problem of a bill of attainder, a problem of the separation of powers, and you have a problem that any censure, to be meaningful, has to at least damage the President's reputation; and that becomes, in my judgment, a bill of attainder, but that, again, is up to you. The consequences, I don't think, will harm us, whatever you do. We have done our best. We have lived up to our responsibility under the Constitution, and all we ask is that you live up to your responsibilities under the Constitution and give us a trial. I am sure you will.

The CHIEF JUSTICE. This is a question to the President's counsel from Senator LEVIN:

Monica Lewinsky has explicitly said in her handwritten proffer that ''no one encouraged'' her to lie. Yet, House Manager ASA HUTCHINSON claimed to the Senate, using inferences, that Ms. Lewinsky was ''encouraged'' to lie. Do the House managers argue that such inferences are as credible as Ms. Lewinsky's direct testimony to the contrary?

Mr. Counsel RUFF. I think Senator LEVIN's question goes to the heart of much of what we have been saying for the last few days. If, in fact, you look at the five volumes stacked up in front of my colleague, Mr. Kendall, you will see Ms. Lewinsky say not just once, but many times, in essence: I was never told to, never encouraged to lie, never traded an affidavit for a job, never did any of the things that lie at the very heart of the managers' case. And so what do we have, then? We have the managers trying to snatch a bit of evidence here, a bit of speculation there, or a bit of extrapolation over there, and say, well, she really didn't mean it when she said several times quite directly, ''Nobody ever told me or encouraged me to lie.''

It is possible, of course, whenever one deals with circumstantial evidence, to make reasonable leaps from that evidence to some viable conclusion. But I think most courts that we are familiar with—and those of you who practice law are familiar with—would have a good deal of difficulty in concluding that if I take a little bit here and a little bit there and a little bit over there, pull them all together into some vast speculation about what was really in someone's mind, and on the other side I have the person saying what is in her mind and saying the opposite, I don't think that case would ever get to the jury.

And maybe it is one of the things that worries me just a little bit about the normal, everyday—we do it all the time in conference between the managers and the independent counsel and Ms. Lewinsky—that maybe in that setting, to the independent counsel gently patting Ms. Lewinsky on the back and telling her it is time to cooperate, maybe the message will become closer to their side and their speculation, don't stay where you were, which is what you told the grand jury, the FBI, and us under oath and not under oath on multiple occasions, which is, indeed, ''Nobody told me to, nobody encouraged me to lie.''

The CHIEF JUSTICE. This is a question from Senator BOND to the House managers:

When Ms. Mills described the President's testimony before the Jones grand jury, she said the President was ''surprised'' by questions about Ms. Lewinsky. What evidence is there of the President's knowledge that Lewinsky questions would be asked? Is there evidence that he knew in advance the details of the Lewinsky affidavit which his counsel presented at the Jones deposition?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

There are numerous evidences in the record to show that the President was not surprised about the questions pertaining to Monica Lewinsky at the January 17 deposition. First of all, in regard to the affidavit testimony of Monica Lewinsky—I believe it was January 6—5th or 6th—is that she discussed that with the President, signing that affidavit, and the content of the affidavit. That is whenever he made his statement, ''I don't need to see it. I have seen 15 of them.''

Again, we don't know what he is referring to in reference to that ''15.'' But clearly, according to Monica Lewinsky's testimony, she went over the contents of that, even though she might not have had it in hand, with the President.

Also, circumstantially, there is a conversation between Mr. Jordan and the President during this time.

But in addition, let me just recall something I made in my presentation—that a few days before the President's deposition testimony, that it was Michael Isikoff of a national publication

called Betty Currie and asked about courier records on the gifts. This startled Betty Currie, obviously, because the gifts at that point were under her bed. As she recalled, she probably told the President that. And then second, she went to see Vernon Jordan about that issue.

All of that leads you to believe, clearly, that the President fully knew that when he went into the deposition on January 17, that he would be asked time and time again about the specifics of his relationship with Monica Lewinsky.

So I think that addresses part of that question.

Let me remark on what Mr. Ruff just said—I am just constantly amazed—about our effort to interview witnesses, because yesterday Mr. Ruff—I believe it was; it might have been Mr. Kendall; excuse me if I have gotten the attribution wrong—but criticized us, saying they want to call witnesses but they have no clue what these witnesses would say. Do you recall that? That was the argument yesterday. And so, if we make an effort to determine what these witnesses would say, then we are criticized for trying to find out what they would say.

So I think that again it is more convenient to talk about what the managers are doing, what the process is, rather than the facts of obstruction.

The CHIEF JUSTICE. This is a question to the White House counsel from Senator KENNEDY:

Would you please respond to Manager HYDE's suggestion that an acquittal would send a bad message to the children of the country, and to Manager HYDE'S statements regarding the fairness of the process in the House of Representatives?

Mr. Counsel CRAIG. Mr. Chief Justice, thank you for that question.

Children—what do we tell the children? Well, ladies and gentlemen of the Senate, that is not an academic question for me and for my wife. I assume that is the case for many, many families all over this country. We happen to have quite a few children, and they are very young; they are under 12. And we talk about what is going on here. We talk about how important it is to tell the truth, and we talk about how wrong it was for the President of the United States not to tell the truth. And we think that we have learned a lot by going through that process. We have talked about what President Clinton did and why it was wrong.

With all due respect to the chairman of the House Judiciary Committee, I and my wife—and I don't think many parents when they raise their children rely every day on messages or resolutions from the Congress of the United States to tell them that it is important to teach children the importance of truth telling.

I am a little bit disappointed in the inference of the argument that those of us who oppose impeachment, for the reasons that you understand, somehow are sending a message that it is OK to kids not to tell the truth. I am a little bit disappointed in that argument, because I don't think that is the way the parents of this country feel. That is certainly not the way I feel. And I don't believe that impeachment is a question of what you tell your children about truth telling. Of course you tell your children to tell the truth. Of course you tell your children the difference between right and wrong. I am surprised that it is an issue here.

The second part of your question, Senator: I went through that House of Representatives experience, and I must say that I was disappointed in it, because we had been promised bipartisanship. When the Office of Independent Counsel sent its referral to the House of Representatives, White House counsel did not have access to that document before it was released to the world. When the Office of Independent Counsel sent its 60,000 pages, 19 boxes of evidence, to the House of Representatives, we were not given access, the way Members of the Judiciary Committee were, to all that material. We were given access to a very limited amount of material in the course of that process. In fact, much of that material we never had access to on behalf of the President.

We were disappointed that there was no actual discussion of the constitutional standards for impeachment before they went forward to vote on an impeachment inquiry. We thought that was the cart before the horse.

We were disappointed and we regretted that grand jury materials provided with promises of confidentiality were dumped into the public with salacious material, unfiltered by the House of Representatives and the Judiciary Committee, and we saw party line vote after party line vote after party line vote over and over and over again in the Judiciary Committee. We were disappointed that the depositions went forward without our participation. We were disappointed there was no definition of the scope of the inquiry. We were disappointed that there was no term of time, no limitation on either the scope or the time of this inquiry. And we were disappointed that there was no adequate notice of the charges.

There were two events that happened near the end of this process that I think were particularly disappointing to us. One was that while the debate was underway on the House floor, Members of the House of Representatives were taken into the evidence room and shown evidence that was not in this record, that had not been included in the discussion in the House Judiciary Committee, that had never been shown to counsel for the President, that was not in the referral and became a factor in the decisionmaking at least of some Members of the House—unfairly so, I think.

And finally, we were disappointed that the Members of the House of Representatives were denied the right and the opportunity to vote for censure. They were promised the right to vote their conscience. They were told they could vote their conscience. And if they had been given that right to vote their conscience, we may not be here today. We might have had the resolution of censure and this thing might have been resolved, and that was the greatest disappointment of all.

Thank you.

The CHIEF JUSTICE. This is a question from Senators BENNETT, BROWNBACK, CAMPBELL, HAGEL, ROTH, SPECTER and MCCONNELL to the House managers:

Would each of the managers who have been prosecutors prior to being elected to the House of Representatives please state briefly whether he believes he would have sought an indictment and obtained a conviction of an individual who had engaged in the conduct of which the President is accused?

Mr. Manager BRYANT. Mr. Chief Justice, I know there are several, probably not only at our table, but all across this Senate, who have had some experience somewhere in prosecution of cases. I would just briefly say that—and I think it has probably been said very well today more eloquently than I will say it, not only from some of the people on our side, but even some of the people on the President's side have talked about this same concept of justice and the rule of law—it is so important in our system of justice that the American people have confidence in that.

And one of the ways that I found in my experience that confidence sometimes suffered were phone calls that occasionally you would receive where there had been an allegation that someone in an elected office or some public official in particular had, allegedly again, committed a crime or perhaps been charged with a crime with allegations of coverup because of who that person was—there was not equal justice out there, people were being treated differently and specially. And that happens, that comes with our territory. We are very visible people. Certainly the President of the United States is the most visible of us.

As I said in my opening remarks, he is a role model for many people. And certainly when these kinds of allegations come up against the President, people raise these kinds of thoughts and complaints.

As a prosecutor, I would find this type of charge particularly of concern not only because of the perjury, which is so important because, as I said earlier, too, truth underpins our whole system, but I find it equally compelling as a prosecutor that a person of this visibility, of this responsibility not only commits a crime himself, but he brings someone else into that. He ensnares another person, actually other people into this, the coverup, the obstruction part—Monica Lewinsky, Betty Currie, Vernon Jordan, all the White House people that we have talked about. He brings other people into this and causes other people to

commit crimes. I would view that even more seriously because of the fact that he made other people commit types of crimes. And because of that, I think as a prosecutor, were this another person, a John Doe of some visibility, a local district attorney, a local mayor or someone like that, there would be no doubt that the allegations would have to go to court.

And I might add in line with this that we have heard of this selecting the President out of this process by saying, well, we should not consider him like we would a Federal judge or like a general that we are talking about maybe promoting to head the Joint Chiefs of Staff or a captain for promotion to major or really anyone else here. It almost seems that—yes, he is different, but it almost seems that we want to treat him like a king because he is the only person we have got here, and because he is the only one, we can't look at him like a thousand judges or 200 generals or other public officials.

I think that is a fallacious argument. If the facts are there, no matter if this man is the President, to me that is what the Constitution is about. I think they set up this process to avoid a king and a kingdom.

I will yield time to Mr. MCCOLLUM.

Mr. Manager MCCOLLUM. I will be much briefer in answering that question, Mr. Chief Justice.

I served as a military judge advocate for 4 years on active duty, 20 more years in the Reserves. I was a prosecutor, defense attorney and military judge. I think this is a very compelling case on the evidence. I would never hesitate to take this to trial if I were prosecuting the crimes of perjury, obstruction of justice, or any of the military offenses that might be included in here. But just on the criminal charges which are in the UCMJ, I would certainly do so if given the opportunity for all the reasons and then some that Mr. BRYANT gave.

Mr. Manager BARR. Mr. Chief Justice, to me this is not a hypothetical question in any sense of the word. As a United States attorney under two Presidents, I had the opportunity not only to contemplate bringing such cases based on the evidence and the law but actually having the responsibility of carrying those cases out and prosecuting them, including a case that probably cost me a primary election in the Republican Party for prosecuting a Member of Congress for precisely the activity which brings us here today; that is, perjury, misleading a grand jury.

So the answer to the question, Mr. Majority Leader, is not only yes but absolutely yes.

The CHIEF JUSTICE. Mr. HUTCHINSON.

Mr. Manager HUTCHINSON. I know we have run out of time. The facts and law support it, and the answer is yes. And may I add that Mr. ROGAN who has certainly prosecuted, Mr. LINDSEY GRAHAM, and Mr. GEKAS, all would—if you would like to join in that. Otherwise, we all would affirm that the answer is yes.

The CHIEF JUSTICE. This is a question to the President's counsel from Senators BOXER and JOHNSON.

The managers repeatedly assert that if the Senate acquits President Clinton, the Senate will be making the statement that the President of the United States should be held above the law. If, as the managers concede, President Clinton may be held accountable in court for the charges alleged in the House articles regardless of the outcome of the Senate trial, how could a Senate vote to acquit the President be characterized as a vote to place him above the law?

Mr. Counsel RUFF. I suppose the one quote that has been heard most often throughout these proceedings in the House and in this body is Theodore Roosevelt's, and I won't repeat it except to go to the heart of this question. The fact that we are having this trial in this Chamber, the fact that we had an impeachment proceeding in the House, is itself part of our rule of law. The President is immersed in the application of the rule of law at this very moment. And the rule of law, as I think my colleague, Ms. Mills, said, is neither a sword nor a shield, depending on your perspective. We are all subject to it and we live with its outcome, if it is fair and is consistent with the system of justice that we have developed in the last 210 years.

And, so, the verdict here, if it is ''not guilty'' as I trust it will be, or if this trial is ended appropriately through some other legal motion or mechanism, as long as it is done within the rule of law, will have met all of our obligations. And most importantly, it will have ensured that the President is treated neither above nor below.

But certainly the one issue that is raised in this question is important to focus on, because this is not a situation in which the President walks away scot-free no matter what happens, not to mention the personal pain and the pain that has been suffered in going through this process. The President has said, and I have said on his behalf, that he will not use his powers, or ask anyone else to use their powers, to protect him against the application of the rule of law. Moreover, just in case it has slipped anyone's mind—and it has occasionally been misstated in other forums—the statute that has allowed the independent counsel to pursue the President for the last 4-plus years specifically provides that he retains jurisdiction over the President for a year after the President has left office.

So there can be no argument that, oh, this will just fall into the cracks, or this will disappear into the ether somewhere. The President will be at risk. We trust that reasonable judgments will be made and a determination will be reached that it is not appropriate to pursue him. But that, too, will be pursued under the rule of law to which he is subject.

The CHIEF JUSTICE. This is a question from Senators CAMPBELL, HAGEL and SPECTER to the House managers:

White House counsel have several times asserted that the grand jury perjury charge is just a ''he says, she says'' case and that we cannot consider corroborating witnesses you cite. What is it about the President's grand jury testimony that convinces you he should be removed from office?

Mr. Manager MCCOLLUM. Mr. Chief Justice, that question goes to the heart of what we are here about today. We have had a great deal of discussion about a lot of peripheral questions and issues, but the fact of the matter is, the simplest portion of this deals with grand jury perjury, and I assume the question principally is directed to the first of four points under the grand jury perjury article, because, for example, the second point with respect to the President having the goal or the intent of being truthful—which he said he did in the grand jury in the Jones deposition—there isn't a ''he says, she says'' question.

That is just very simple. The President lied multiple times in that civil deposition, and if he said in the grand jury to the grand jurors, ''My goal was to be truthful,'' it is pretty self-evident that that was a lie and he perjured himself. So that is not a ''he says, she says.''

But the question that the counsel over here has tried to bring up several times, saying the part with respect particularly to Monica Lewinsky saying that the President touched her in certain parts of her body which would have been covered by the Jones definition of sexual relations, and the President who said explicitly in his grand jury testimony, ''I didn't touch those parts,'' and, ''Yes, I agree that would have been and is part of the definition of sexual relations in the Jones case''—that is, whether you believe her or him, and they say that is a ''he says, she says,'' and it is not.

But even if it were, you could listen to it and accept it. I think there is some confusion about the law. The law of grand jury perjury does not require two witnesses. Nor does it require the corroborating testimony of anybody else. It does not. That is why, in 1970, it was changed, and most prosecutions today for perjury, including people who are in Federal prison today for perjury in civil cases for lying about matters related to sex—and there are several, a couple of whom testified before us in the Judiciary Committee during our process and hearings—are based upon that 1970 law that does not require any corroboration.

In this case, you have Monica Lewinsky, who is a very credible witness by other reasons, so that you don't even have to get to those corroborating witnesses on those points. No. 1, she was under immunity under the threat of prosecution when she testified that way. No. 2, she has consistent statements throughout, many times over. She didn't say she had sexual intercourse with him. She could have made that up, but she didn't. Everything she says is believable about that portion of it. And third, and not

last in all of this, is that she did make very contemporaneous statements to at least six other people who were her friends and counselors, describing in detail exactly the same thing she testified to under oath before the grand jury in this respect.

Now they say, the counselors here, you can't consider that under the Federal Rules of Evidence because that is, presumably, hearsay. Well, there are at least three exceptions to that hearsay rule which could be brought out in a courtroom. They have gone about trying to carefully say we have never said that Monica Lewinsky lied.

I remember, I think it was Mr. Kendall or maybe it was Mr. Craig up there a little earlier, saying when asked that question, ''Did she lie in this instance or in any other?'' and they say it is just a different version of the truth. If she is saying it as explicitly as she is about this nine times or four times or whatever, and the President is saying I never did that, I don't see how they can fudge around, challenging her truthfulness and credibility.

That is what they have been doing. And in any courtroom I have ever been in, once that has occurred you can certainly bring in her prior consistent statements, and you don't even have to go with the rules of evidence on this. You are not bound by those rules of evidence. And common sense says she had no motive to be lying to her friends in those numerous telephone conversations or her meetings with her counselors when she described in detail these things the President says he didn't do, because all of those statements occurred, all of those discussions occurred before she ever was knowingly on a witness list or likely to have to testify in any other way.

She is very credible. Those prior consistent statements are very believable, and I submit to you they would be admissible in a court in the kind of contest that would be involved in a situation like this. It goes to the very heart of what we are here about—grand jury perjury, the simplest, clearest one. The President lied. Monica Lewinsky told the truth about it. And it is profound and it is important and it is critical to this case. And that is the principal one of the perjuries that we have been drawing your attention to because it is so clear. Thank you.

The CHIEF JUSTICE. This is a question from Senator DORGAN to counsel for the President:

> How can the House claim that its function is accusatory only, when the articles it voted call for the President's removal?

Mr. Counsel RUFF. This, of course, takes us back to the very heart of the argument that raged for a small time here yesterday and on previous days, the notion that the House of Representatives viewed itself during the month of December as merely—I won't even say that it rose in their mind to the level of an accusatory body that we would think of when we think of the grand jury, but to a body whose job it was, as one of the managers said at one point, simply to find probable cause to believe that the President had committed these acts.

Perhaps there has been some extraordinary transposition from the mood and the tenor of the comments made during those days when the Judiciary Committee was doing its work to the days when these managers have appeared in the well of the Senate, something that has transformed the mere probable cause screening finding that they allegedly viewed as the role of the House and the Judiciary Committee into the certainty that you hear today.

It is a good question, as to how, then, given the role they saw for themselves, they could go so far, not only to seek the removal of the President but, indeed, to add in all their prosecutorial vigor something that has never been sought before, a bar against holding any future office, at the level of certainty that they must have achieved given the standard that they held themselves to. What happened between December 19 and today that allows these managers to come before you not saying, ''Well, we were certain then and we're more certain now,'' or ''We only found probable cause back in 1998, but in 1999 we are sufficiently certain that we ought to shut down the public will as expressed in the elections of 1996.''

I haven't yet found an answer to that question.

The CHIEF JUSTICE. This question is from Senators BOND, BROWNBACK, CAMPBELL, HAGEL, LUGAR, HUTCHISON of Texas, ROTH and STEVENS. It is directed to the House managers:

> After everything you have heard over the last several weeks from the President's counsel, do you still believe that the facts support the charges of obstruction of justice alleged in the articles of impeachment? Specifically, what allegations of improper conduct has the President's counsel failed to undermine?

The question is also from Senators SPECTER and MCCONNELL.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. First of all, why is obstruction of justice important to begin with? I think back on an opportunity I had at a hearing once to question a member of the Colombian drug cartel. I asked him: ''What is the greatest weapon that law enforcement has that you fear?''

His answer was very quickly, ''Extradition.''

I said, ''Explain. Why is extradition feared?''

He said, ''Because in Colombia, you can fix the system, but in America you can't.''

That is why I think the obstruction of justice charge is so important to the administration of justice. Money, position, power does not corrupt, should not corrupt the administration of justice.

The question is, Where has the President attacked, counselors attacked credibly the allegations of obstruction? The first one is that the President personally encouraged a witness, Monica Lewinsky, to lie. This is on December 17 at 2 a.m. in the morning when the President calls Monica to tell her that she is a witness on the list—2 a.m. in the morning. At that time, of course, she is nervous, she is a witness and asked, ''Well, what am I going to say?'' And the President offers, according to Monica Lewinsky, you can always say you came to see Betty or you came to deliver papers.

The President's counselor attacked this by saying, ''Well, remember what Monica said, 'I was never told to lie.' '' I refer you to a Tenth Circuit case, United States v. Tranakos, Tenth Circuit, 1990. The law is that the request to lie need not be a direct statement. As the court held:

> The statute prohibits elliptical suggestions as much as it does direct commands.

That is common sense. That is logic. That is what a jury applies—common sense. And here, of course, in this case, Monica Lewinsky testified that she was told, in essence, to lie. The President didn't say, ''Monica, I need you to go in and lie for me.'' He told her the cover story in a legal context that she could use that would cover for him that, in essence, would be a lie. We all know that is what it is.

Of course, the President says—well, he denies that. Of course, he said, I never told her to use the cover stories in a legal context, directly in conflict, but clearly the President's counselors have not attacked that obstruction of justice.

The second one is the jobs and the false affidavit. They say there is absolutely no connection in these two, none whatsoever. Of course, I pointed out the testimony of Vernon Jordan who testified it doesn't take an Einstein to know that whenever he found out she was a witness, she was under subpoena, that the subpoena changed the circumstances. That is the testimony of Vernon Jordan. They say there is no connection. Vernon Jordan, the President's friend, says the circumstances change whenever you are talking about getting a job with somebody who is also under subpoena in a case that is very important to the President of the United States.

Of course, Vernon Jordan also indicated the President's personal involvement when he testified before the grand jury in June. He said he was interested in this matter: ''He''—referring to the President—''was the source of it coming to my attention in the first place.''

He further testified: ''The President asked me to get Monica Lewinsky a job.''

The President was personally involved in the obtaining of a job. He was personally concerned about the false affidavit, and Vernon Jordan acknowledges that when those are combined, the circumstances are different.

The third area of obstruction is tampering with the witness, Betty Currie,

on January 18 and January 20 when the questions were posed after the deposition. The President's counselor challenged this and said, Well, she wasn't a witness. Even the Jones lawyers never had any clue that she was going to be a witness in this case. The President couldn't know that she was going to be a witness.

They hoped that we would never find the subpoena, because Mr. Ruff made that statement early on, which he very professionally expressed regret that he made that misrepresentation, but we found the subpoena. We found the subpoena that was actually issued a few days after the deposition for Betty Currie. She was a witness; she was not just a prospective witness. She was there, she had to be ready to go and the President knew this and the Jones lawyer knew it. So that stands. The pillar of obstruction stands.

The false statements to the grand jury—that has been covered. There has never been any holes that have been poked into that, but it was to continue the coverup of the false statements that were made in the civil rights case.

Another area of obstruction was December 28 when the gifts were retrieved, and this has been challenged. I will admit, as I always have, that there is a dispute in the testimony. But I believe the case is made through the circumstances, the motivation, the testimony of Monica Lewinsky as to what Betty Currie said when she called and the corroborating evidence. I don't believe they have poked a hole in that. I believe it stands. We would like to hear the witnesses to make you feel more comfortable in resolving that conflict and determine the credibility of those witnesses.

But the gifts that were subpoenaed were evidence in a trial; they were needed in a civil rights case. The President knew they were under subpoena; he had the most to gain, and they were retrieved. And I believe the testimony indicates that it was based upon the actions of Betty Currie that would have been directed by the President.

There are other areas of obstruction, including the President allowing his attorney, Robert Bennett, to make false representations to the Federal district judge in the deposition. The President's defense is that there is no proof whatsoever that he was paying any attention. We offered the videotape that shows he is believed to be looking at the attorney, but we would offer a witness in that regard to show that he was attentive. That is simply something that can be substantiated.

We believe that you can evaluate that, that he was paying attention, but that is an element of obstruction because he was allowing his attorney to make a false representation to the court that was totally untrue, that would aid in the coverup and that was presented.

The CHIEF JUSTICE. Mr. HUTCHINSON, I think you have answered the question.

Mr. Manager HUTCHINSON. I thank the Chief Justice.

The CHIEF JUSTICE. This is a question from Senator LEVIN to counsel for the White House:

In their brief to the Senate, the House managers said that there was ''no urgency'' to help Ms. Lewinsky until December 11, 1997, and that on that day ''sudden interest was inspired'' by a court order, which the House managers had represented was issued in the morning of December 11, before the Vernon Jordan/Monica Lewinsky meeting that afternoon.

It took some doing yesterday to get the House managers to finally acknowledge that the court order was not issued in the morning, but in the afternoon of December 11. Why were the House managers so reluctant to make that acknowledgment?

Mr. Counsel KENDALL. Mr. Chief Justice, well, I think they were reluctant to make the acknowledgement because they were in cement due to their trial brief, which at page 20, as the question indicates, said, as to this particular time period after the December 6 meeting, ''There was obviously''—there was obviously—''still no urgency to help Ms. Lewinsky.'' They thought that they had a chronology that was consistent with the inference of causation. But when you look at the true time of the events, that dissolves.

Now, Mr. Manager HUTCHINSON used a word repeatedly, a phrase I would like to call your attention to, as he was summarizing the evidence. He used the phrase: ''In essence.'' Now, that is another phrase that is kind of a weasel word. When you hear that, it means that the evidence isn't really quite there, but if you look at the big picture maybe you can see what is there ''in essence.'' It doesn't work here. It doesn't work because of the evidence.

Just a week ago, Mr. Manager HUTCHINSON, on this obstruction of justice question, was asked very clearly: ''On the case that you have against the President on obstruction of justice, not the perjury, would you be confident of a conviction in a criminal court?'' And he said, ''No, I would not.''

Now, I am not going to walk through each and every element that he identified. I think we have repeatedly dealt with them. And I am not going to step on your patience to do that again each time.

I would like to make two points. That is, in terms of encouraging Ms. Lewinsky to lie, were these cover stories an attempt to encourage her to lie? As I tried to indicate, there is testimony in the record that at a certain time in the relation these cover stories were discussed. There is not any evidence, however, from Ms. Lewinsky, the President, or anyone else, that these were discussed in connection with the testimony, in connection with the affidavit. You remember Ms. Lewinsky, when asked if she could exclude that possibility, said, ''I pretty much can.''

Now, the testimony that Mr. HUTCHINSON mentioned with Mr. Jordan on December 19, you remember he quoted Mr. Jordan. He said the discovery of the subpoena at that point changed the circumstances. Well, it did, but just in the opposite way that Mr. Manager HUTCHINSON would have you infer, because when Mr. Jordan discovered, on December 19, that Ms. Lewinsky had a subpoena, was going to testify in the Jones case as a witness, unless she could get it quashed, he went to her and went to the President to seek assurance that the job assistance he was engaging in could not at any time be said to be improper because of the presence of an improper relationship. Both parties assured him there was no such relationship. This observation by Mr. Jordan cuts just the opposite way.

Thank you.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I do have another question I will send to the desk momentarily, but I would like for the Senators to know that we have had some 104 or 105 questions now that have been asked. I believe that is correct—104. Senator DASCHLE and I conferred. We want to thank the Senators for their participation and their questions. We do want to make it clear we are not seeking questions. (Laughter.)

So don't feel like you need to help us by sending them down. But under your rights as Senators, under the Senate Resolution 16 and the rules we are proceeding under, every and each Senator is entitled to submit a question if he or she feels it is important, but I hope that it will be one that you think really is essential that has not been touched on somewhere already in the answers to the questions and also would hope—and that the RECORD be made clear—that we, in a bipartisan way, have tried very hard to make sure that this proceeding here and the question period, and all we have done, has been fair both to the President's counsel and the House managers. And we will continue to work in that vein.

With that observation, and if we do need to continue going forward with questions, we would have to give some consideration of taking a break and going longer, although I had indicated I hoped we could quit at 4. Maybe after this question and, if necessary, one or two more, we could end for the day and then get together and see if we need more time on Monday for additional questions.

I send the next question to the desk.

The CHIEF JUSTICE. This is a question from Senators COCHRAN, ROTH, CAMPBELL and FRIST to the House managers:

The President's counsel has suggested that the Senate has considered a ''good behavior'' standard in impeachment cases involving Federal judges. The removal of judges seems to have been based by the Senate on the impeachment power whose standard for removal is the same for both Federal judges and executive branch officials. Is the counsel for the President asking us to use a different test for removal of this President than we

did in the case of Judge Walter Nixon? Please explain.

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, I appreciate the opportunity to answer this question. It is an important question. And it is true that counsel for the President are asking that you use a different standard in this case than the standard you have already established, not in just one case but, in fact, in a series of cases involving Federal judges who were before the Senate in the 1980s. There was a succession of three cases in the Senate, all dealing with the question of whether a Federal judge who had lied under oath should be removed from office because the Federal judge had lied under oath. In all three cases, the Senate decided that the Federal judge should be convicted and removed.

Now, the President's counsel have the burden of establishing that those recent and very clear precedents of the Senate should not apply to this case where the President is charged with lying under oath. And they attempt to do that in a number of ways. But I would suggest, as you evaluate their attempt to distinguish away those precedents, that you look first and last to the Constitution.

The Constitution should be your guide. And I would suggest to you that there is nothing in the Constitution which establishes a different standard for the President—for any reason. There is not something in the Constitution that says he is subject to a different standard because he is elected. That argument had been advanced. If you look in the Constitution, you simply will not find that. And to argue for a different standard because the President is elected, I would submit to you, is to impose something on the Constitution that is entirely alien to the document itself.

The Constitution contains a single standard for the application of the impeachment and removal power. I have read it before, but I will read it again. Article II, section 4 provides:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Now, reference was made in the question, and reference has been made by the President's counsel, to the good behavior clause. That is found in article III, section 1. That clause does not alter the standard I have just read to you, however. Rather than creating an altered standard for removal of Federal judges, the good behavior clause merely establishes that the term of office for judicial officers is life.

Now, I wouldn't ask you to take my word for this. Let me refer again to the 1974 report by the staff of the Nixon impeachment inquiry. There they asked the question: ''Does Article III, Section 1 of the Constitution, which states that judges 'shall hold their Offices during good Behaviour,' limit the relevance of the. . .impeachments of judges with respect to presidential impeachment standards as has been argued by some?'' That is essentially the question before the Senate now. Their answer was: ''It does not.'' It does not. ''. . .the only impeachment provision''—they go on to say—''discussed in the [Constitutional] Convention and [indeed]. . .in the Constitution is Article II, Section 4, which by its expressed terms, applies to all civil officers, including judges. . .''

Now, I would go on to note, it is very interesting that at the Constitutional Convention, on August 27, 1787, an attempt was made to amend the good behavior clause by adding a provision for the removal of judges by the executive on the application by the Senate and House of Representatives. Now, this proposal, which was offered by John Dickinson, was based on the English parliamentary practice of removal of judges by address, a practice also utilized by several American States. And under this process, judges could be removed for misconduct, falling short of the level of seriousness that would justify impeachment.

Now, the proposal offered by Dickinson was overwhelmingly rejected. It was overwhelmingly rejected by the Convention. Thus, the sole provision for removal and the sole standard for removal is that which I have referred to in article II, section (4).

Now, mention has been made, and I want to respond to this, because mention has been made of efforts of Congress to establish a separate procedure for the removal of Federal judges, a procedure separate and apart from the impeachment and removal process.

Specific mention has also been made of testimony given in 1970 by the Chief Justice, who was then an assistant attorney general, regarding a proposal to establish a separate removal procedure. The testimony given by the Chief Justice at that time related to the constitutionality of the provisions of the bill relating to the removal of judges by methods other than impeachment.

Now, my own view, quite candidly, is that such a removal procedure raises serious constitutional questions—serious questions about maintaining the independence of the judiciary. Putting that question aside, and regardless of the standards that might be applied in such a separate removal procedure, it is clear that the single constitutional standard for impeachment and removal would remain the same. That is what is in the Constitution. That can't be changed by any statute or anything set up apart from the constitutional procedures.

Now, one thing I want to say as I move toward concluding my response: It should be recognized that some specific acts might be a breach of duty if done by a judge but not a breach of duty if done by the President of the United States. That is an important distinction that we all should bear in mind. For example, it would be serious misconduct for a judge to engage in repeated ex parte meetings with parties who have an interest in a matter pending before that judge; but it is typical for the President to engage in such ex parte meetings with persons who have an interest in matters on which he will decide. For a judge, such conduct constitutes a breach of duty; for the President, it does not constitute a breach of duty.

The CHIEF JUSTICE. Mr. CANADY, I think you have answered the question.

This question from Senator HARKIN is to counsel for the President:

> There are three contradictions in the record: One, who touched whom on what parts of the body; two, when the relationship began; three, who called whom to get the gifts, Ms. Currie or Ms. Lewinsky.
>
> How will these witnesses clear up the contradiction?

Mr. Counsel CRAIG. Mr. Chief Justice, Senator HARKIN, it is difficult for me to explain how, after you have gotten 19 interviews, 2 grand jury appearances, and 1 deposition to cover that precise territory, any further kind of inquiry along those lines would be of any help.

The House managers have argued that they need to call witnesses for the purposes of resolving inconsistencies, conflicts, and discrepancies in testimony. And they have, in fact, identified Monica Lewinsky in particular as having given testimony in conflict with the testimony of the President, with Betty Currie and Vernon Jordan.

But it would be well to remember that the lawyers for the Office of Independent Counsel certainly are not seeking to elicit testimony that is favorable to the President, that those lawyers have already done a great deal of this precise kind of inquiry at some great length. Those lawyers—no friends of the President—have already explored inconsistencies, they have already tested memory, they have already laboriously and at great length subjected these witnesses to searching scrutiny, and their work is available for all to see in the record of this case before the Senate today.

Let me be very specific and very concrete. Monica Lewinsky was interviewed by the lawyers for the Office of Independent Counsel or testified before the grand jury on 20 different occasions after Betty Currie and Vernon Jordan had given their testimony before the grand jury. And contrary to the assertions of the House managers, Monica Lewinsky was interviewed six times and testified twice—one time before the grand jury and once in a sworn deposition after the President had given his testimony before the grand jury on August 17.

On August 19, she was interviewed by the FBI and by lawyers for the special counsel. She testified before the grand jury—Ms. Lewinsky testified before the grand jury on August 20. She was interviewed by lawyers and FBI agents for the independent counsel on August 24. She was interviewed on August 26. She

appeared for a deposition held in the conference room of the Office of Independent Counsel on August 26. She was interviewed pursuant to her immunity agreement with independent counsel and FBI agents on September 5. She was also interviewed—excuse me; that was September 3. She appeared and listened to tapes with the FBI present on many occasions during the period September 3 through September 6. She appeared and was interviewed by special counsel, independent counsel, on September 7 and September 5 and September 6.

So it raises a question as to whether or not the desire to interview Monica Lewinsky stems from a desire to resolve conflicts that she has with other people, because certainly these occasions gave the lawyers for the independent counsel an opportunity to do so.

I would simply submit that within the bounds of ethical behavior, I am sure, because I respect the professionalism of the House managers, but I would suspect that one of the reasons they want to inquire of Ms. Lewinsky is not to resolve discrepancies and disputes, it is to perhaps challenge her testimony when it is helpful to the President and perhaps bolster her testimony when it is not helpful to the President. The House managers are not neutral investigators, they are neutral interrogators.

It raises questions about what the managers' true purpose is in calling Vernon Jordan and Betty Currie forward as witnesses, what they want to inquire about if they conduct an interview of them. I suggest that this is also a bit of a fishing expedition, looking for evidence that will be damaging to the President.

We are not afraid of witnesses, but we do want fairness, and we don't think it is fair in this process. If you are going to have a real trial, then we want to have a real defense, and to have a real defense requires real discovery and real opportunity to have access to documents and witnesses and evidence that has been in the custody and the control of the House of Representatives, that has never been made available to us, that is in the custody and control of the Office of Independent Counsel, that has not been made available to us.

I suggest, as we have seen from the statements made by the managers to this body yesterday and today about Vernon Jordan suggesting—actually suggesting that he did not tell the truth when he testified numerous times before the grand jury, which is an outrageous suggestion, and suggesting, which happened today—implying that he destroyed evidence, which not even the independent counsel had suggested, they seek to do nothing more than to attack, attack, attack the best friend of the United States, the President of the United States, and his personal secretary.

That is the reason they want to talk to these people. I think it is an improper reason. It is wanting to win too much. I don't think the U.S. Senate should be part of it.

The CHIEF JUSTICE. This question is from Senators HAGEL, ABRAHAM, and HATCH to the House managers:

White House counsel has indicated their opposition to calling witnesses, asserting that calling witnesses would not shed light on the facts and would unnecessarily prolong the proceedings. But it is the responsibility of the Senate to find the truth. And if any Senators reasonably believe that hearing witnesses would assist in finding the truth, why shouldn't they be called?

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice.

''Methinks thou doth protest too much.'' I think that is what White House counsel has been doing. I don't know why, but they, frankly, don't want witnesses. They don't want what you normally have in a trial. We can paint this with any kinds of colors you want to have, but a trial without witnesses, when it involves a criminal accusation, a criminal matter, is not a true trial; it really isn't. It is not what I think of, and I guarantee it is not what any of my friends sitting over here who have been counsel, prosecutors and defense lawyers, think of. It is remotely conceivable, but certainly not where you have had the inferences and the conclusions that we draw logically from the entire sequence of events that are painted from the very day when the President got word of Monica Lewinsky being on the witness list, and all the way through his testimony in the Jones case, all the way through the grand jury testimony, when they challenge every inference that you should logically draw from the record, and then suggest that, oh, but we should not have anybody in here; so you who are going to judge ultimately whether our representations are persuasive or not about those inferences, whether you should be able to judge—and I think you should—what the witnesses actually are saying.

I will give you one illustration. I don't know how many times—two or three times—I put up here on the board, or I have said to you—and I know a couple of my colleagues said to you—that during the discussion with regard to the affidavit that Monica Lewinsky had in front of the grand jury, she explicitly said: No, the President didn't tell me to lie, but he didn't discourage me either. He didn't encourage me or discourage me.

You need to have her say that to you. They have even been whacking away at that, confusing everything they can, talking about the job searches at the same time they are talking about the affidavit, what she said here, there, or anywhere else. Witnesses are a logical thing. There are a lot of conflicts that are here.

When we get to the point—which we presume we will get that opportunity to do—to argue our case on why we should have witnesses, maybe Monday or perhaps Tuesday—I think that even though you have a motion to dismiss, we will get that chance—we will lay out a lot of these things. There are a lot of them out there. But the point is, overall, you need to have the witnesses to judge what any trier of fact judges about any one of these.

I would be happy to yield to Mr. GRAHAM or Mr. ROGAN if they wish—neither one. That is fair enough.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, it now approaches the hour that we had indicated we would conclude our work on Saturday. There may still be some questions that Senators would like to have offered. I have talked to Senator DASCHLE.

One suggestion made is that maybe on Monday we would ask that questions could be submitted for the RECORD in writing. I think that is a common practice. We don't want to cut it off. At this point, I would not be prepared to do that. But I would like to suggest that we go ahead and conclude our business today, and if there is a need by a Senator on either side to have another question, or two or three, we will certainly consult with each other and see how we can handle that, perhaps on Monday, and even see if it would be appropriate to prepare a motion with regard to being able to submit questions for the RECORD, which would be answered. We would not want to abuse that and cause that to be a protracted process.

In view of the time spent here—in fact, we have had around 106 questions, and we are about 10 hours into this now—I think we should conclude for this Saturday. We will resume at 1 p.m. on Monday and continue in accordance with the provisions of S. Res. 16. I will update all Members as to the specific schedule when it becomes clear.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. I ask unanimous consent that in the RECORD following today's proceedings there appear a period of morning business to accommodate bills and statements that have been submitted during the day by Senators. I thank my colleagues for their attentiveness during the proceedings.

The CHIEF JUSTICE. Without objection, it is so ordered.

ADJOURNMENT UNTIL 1 P.M. MONDAY, JANUARY 25, 1999

Mr. LOTT. Mr. Chief Justice, I ask that the Senate stand in adjournment under the previous order.

Mr. HARKIN. I object.

Mr. LOTT. Mr. Chief Justice, I move that the Senate stand in adjournment under the previous order.

Mr. HARKIN. Mr. Chief Justice, I seek recognition.

The CHIEF JUSTICE. The question is on the motion to adjourn.

The motion was agreed to.

Thereupon, at 3:55 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Monday, January 25, 1999, at 1 p.m.

(The following statements were submitted at the desk during today's session:)

LEADER'S LECTURE SERIES

● Mr. LOTT. Mr. President, in the past several months, through the Leader's Lecture Series, we have been honored to hear from some of America's most outstanding leaders. Speaking just down the hall in the stately Old Senate Chamber, these distinguished guests have shared recollections and observations of life in the Senate, in politics, in this great country. Their imparted wisdom allows us not only to add to the historical archive of this institution, but also to gain perspective on our own roles here. As sponsor of the series and a student of recent history, I am especially appreciative of their participation.

At the conclusion of each Congress, the Senate will publish the collected addresses of these respected speakers and make them available to the public. But their words should be recorded prior to that time. For this reason, Mr. President, I now request that the presentations of our most recent lectures—former President George Bush, who was here Wednesday night, and Senator ROBERT BYRD of West Virginia, who spoke in the fall—be printed in the RECORD.

The material follows:

REMARKS BY U.S. SENATOR ROBERT C. BYRD: THE SENATE'S HISTORIC ROLE IN TIMES OF CRISIS

Clio being my favorite muse, let me begin this evening with a look backward over the well traveled road of history. History always turns our faces backward, and this is as it should be, so that we might be better informed and prepared to exercise wisdom in dealing with future events.

''To be ignorant of what happened before you were born,'' admonished Cicero, ''is to remain always a child.''

So, for a little while, as we meet together in this hallowed place, let us turn our faces backward.

Look about you. We meet tonight in the Senate Chamber. Not the Chamber in which we do business each day, but the Old Senate Chamber where our predecessors wrote the laws before the Civil War. Here, in this room, Daniel Webster orated, Henry Clay forged compromises, and John C. Calhoun stood on principle. Here, Henry Foote of Mississippi pulled a pistol on Thomas Benton of Missouri. Senator Benton ripped open his coat, puffed out his chest, and shouted, ''Stand out of the way and let the assassin fire!'' Here the eccentric Virginia Senator John Randolph brought his hunting dogs into the Chamber, and the dashing Texas Senator, Sam Houston, sat at his desk whittling hearts for ladies in the gallery. Here, seated at his desk in the back row, Massachusetts Senator Charles Sumner was beaten violently over the head with a cane wielded by Representative Preston Brooks of South Carolina, who objected to Sumner's strongly abolitionist speeches and the vituperation that he had heaped upon Brooks' uncle, Senator Butler of South Carolina.

The Senate first met here in 1810, but, because our British cousins chose to set fire to the Capitol during the War of 1812, Congress was forced to move into the Patent Office Building in downtown Washington, and later into a building known as the Brick Capitol, located on the present site of the Supreme Court Building. Hence, it was December 1819 before Senators were able to return to this restored and elegant Chamber. They met here for 40 years, and it was during that exhilarating period that the Senate experienced its ''Golden Age.''

Here, in this room, the Senate tried to deal with the emotional and destructive issue of slavery by passing the Missouri Compromise of 1820. That act drew a line across the United States, and asserted that the peculiar institution of slavery should remain to the south of the line and not spread to the north. The Missouri Compromise also set the precedent that for every slave state admitted to the Union, a free state should be admitted as well, and vice versa. What this meant in practical political terms, was that the North and the South would be exactly equal in voting strength in the Senate, and that any settlement of the explosive issue of slavery would have to originate in the Senate. As a result, the nation's most talented and ambitious legislators began to leave the House of Representatives to take seats in the Senate. Here, they fought to hold the Union together through the omnibus compromise of 1850, only to overturn these efforts by passing the fateful Kansas-Nebraska Act of 1854.

The Senators moved out of this room in 1859, on the eve of the Civil War. When they marched in procession from this Chamber to the current Chamber, it marked the last time that leaders of the North and South would march together. The next year, the South seceded and Senators who had walked shoulder to shoulder here became military officers and political leaders of the Union and of the Confederacy.

This old Chamber that they left behind is not just a smaller version of the current Chamber. Here the center aisle divides the two parties, but there are an equal number of desks on either side, not because the two parties were evenly divided but because there was not room to move desks back and forth depending on the size of the majority, as we do today. That meant that some members of the majority party had to sit with members of the minority. It did not matter to them. The two desks in the front row on the center aisle were not reserved for the majority and minority leaders as they are now, because there were no party floor leaders. No Senator spoke for his party; every Senator spoke for himself. There were recognized leaders among the Senators, but only unofficially. Everyone knew, for example, that Henry Clay led the Whigs, but he would never claim that honor. Clay generally sat in the last row at the far end of the Chamber.

The Senate left this Chamber because it outgrew the space. When they first met here in 1810 there were 32 Senators. So many states were added over the next four decades that when they left in 1859, there were 64 Senators. Yet, while the Senate had increased in size, it was essentially the same institution that the Founders had created in the Constitution. Today, another century and four decades later, and having grown to 100 Senators, it is still essentially the same institution. The actors have changed; the issues have changed; but the Senate, which emerged from the Great Compromise of July 16, 1787, remains the great forum of the states.

This is so, largely, because as a nation, we were fortunate to have wise, cautious people draft and implement our Constitution. They were pragmatists rather than idealists. James Madison, particularly, had a shrewd view of human nature. He did not believe in man's perfectability. He assumed that those who achieved power would always try to amass more power and that political factions would always compete out of self-interest. In *The Federalist Papers*, Madison reasoned that ''in framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and, in the next place, oblige it to control itself.'' Madison and other framers of the Constitution divided power so that no one person or branch of government could gain complete power. As Madison explained it: ''Ambition must be made to counteract ambition.''

However, ambition has not always counteracted ambition, as we saw in the enactment by Congress of the line item veto in 1996. Just as the Roman Senate ceded its power over the purse to the Roman dictators, Sulla and Caesar, and to the later emperors, thus surrendering its power to check tyranny, so did the American Congress, the Senate included. By passing the Line Item Veto Act the Congress surrendered its control over the purse, control which had been vested by the Constitution in the legislative branch.

This brings me to the first point that I would like to leave with you this evening. It is this: the legislative branch must be eternally vigilant over the powers and authorities vested in it by the Constitution. This is vitally important to the security of our constitutional system of checks and balances and separation of powers. George Washington, in his Farewell Address of September 17, 1796, emphasized the importance of such vigilance:

''It is important likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. . . . The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the others, has been evinced by experiments ancient and modern. . . . To preserve them must be as necessary as to institute them.''

Each Member of this body must be ever mindful of the fundamental duty to uphold the institutional prerogatives of the Senate if we are to preserve the vital balance which Washington so eloquently endorsed.

During my 46 years in Congress, and particularly in more recent years, I have seen an inclination on the part of many legislators in both parties to regard a chief executive in a role more elevated than the framers of the Constitution intended. We, as legislators, have a responsibility to work with the chief executive, but it is intended to be a two-way street. The Framers did not envision the office of President as having the attributes of royalty. We must recognize the heavy burden that any President bears, and wherever and whenever we can, we must cooperate with the chief executive in the interest of all the people. But let us keep in mind Madison's admonition: ''Ambition must be made to counteract ambition.''

As Majority Leader in the Senate during the Carter years, I worked hard to help President Carter to enact his programs. But I publicly stated that I was not the ''President's man''; I was a Senate man. For example, in July 1977, I opposed President Carter's plan to sell the AWACS (Airborne Warning and Control System) to Iran. Iran was then a military ally of the United States, but I was troubled over the potential security risks involved and the possibility of compromising

highly sophisticated technology in that volatile region. I was concerned that the sale ran contrary to our national interests in maintaining a stable military balance and limited arms proliferation in the Middle East. Both Houses of Congress had to vote disapproval resolutions to stop the sale. I enlisted the support of the Republican Minority Leader, Howard Baker. Senator Baker was someone who could rise above political party when he believed that the national interests required it, just as he did during the Panama Canal debate. The Carter Administration chose to withdraw the sale of AWACS temporarily. Shortly afterwards, the Iranian Revolution occurred and the Shah was deposed. Had the sale gone through as planned, those sophisticated aircraft would have fallen into the hands of an unfriendly government. As so often has happened in our history, individual courage and character again charted our course.

This brings me to my second point. On the great issues, the Senate has always been blessed with Senators who were able to rise above party, and consider first and foremost the national interest. There are worthy examples in Senate history.

When I came to the Senate in 1959, artists were at work painting five porthole portraits in the Senate reception room. The Senate had appointed a special Committee chaired by Senator John F. Kennedy to select the five most significant Senators in Senate history. This was no easy task, because there were many potential candidates. In setting the criteria, the Committee looked to Senators who had stood firm for principle, who had not blown with the prevailing political winds, and who had made personal sacrifices for the national good. They were not saints or perfect men. Daniel Webster's personal financial dealings left an eternal blot on his record; yet, he deserved to have his portrait in the Senate reception room, not simply as a great orator but as a man who sacrificed his own political standing by endorsing the compromise of 1850, which was deeply unpopular in his home state of Massachusetts, but which he realized was the best chance to hold the Union together.

In my almost 46 years in Congress, I have seen other courageous Senators. I have already referred to the courage demonstrated by former Senator Howard Baker during the Panama Canal debates. Without Senator Baker's support, the Panama Canal Treaties would never have been approved by the Senate. The killing of American servicemen in Panama would have gone on, but Senator Baker threw his shoulder behind the wheel and helped to construct what he and I referred to as leadership amendments, amendments which protected U.S. interests in that region, and we both worked shoulder to shoulder against great odds, as indicated by the polls. We did so because we believed, after careful study, that the Treaties were in the best interests of the United States.

Howard Baker knew what Mike Mansfield and all students of the Senate's institutional role know. Political polarization—too much emphasis on which side of the aisle one sits, is not now, and has never been, a good thing for the Senate. I am talking about politics when it becomes gamesmanship or when it becomes mean-spirited or when it becomes overly manipulative, simply to gain advantage. I am not talking about honestly held views or differing philosophical positions. Those things enrich our system. Americans have always loved a good debate. And that is what I believe they wish for now—more substantive and stimulating debate and less pure politics and imagery. But I well understand history and its ebb and flow, and I well know that we live in an age of imagery. It is simply my wish that, sometime soon, the rising tide of imagery and partisanship will begin to ebb rather than to flow quite so freely.

Washington, in his farewell address, warned us against the ''baneful effects of the spirit of party'' when he said:

''. . . in governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest instead of warming, it should consume.''

I believe that the American people are more than tired of partisan warfare. I believe they wish for less of it from the Congress, especially in the Senate, where more statesmanship and a longer view are still expected. Declining participation in elections, and repeated public surveys which indicate weariness, distrust, and alienation within our system ought to serve as a harbinger to be ignored at our peril.

It must be a matter of concern to all of us that all too few Americans look to officeholders for inspiration in these troubled and turbulent times. How can we attract the talent needed to serve in public office in future years if elected officials continue to be held in such low esteem? I would very much like to see a rekindling of basic faith in our leaders, and a renewal of interest in politics and in public service. But the existence of inspiring leadership by public officials is fundamental to a shoring up of that faith.

In short, I think the American people are in desperate need of some old-fashioned heroes. Now, it seems, today's heroes, if we want to loosely use the term, are merely celebrities—rock stars who spout deplorable messages, or sports figures who amass fortunes advertising baggy clothes at exorbitant prices. Not much to look up to here, I say. Not much to build dreams on. Look hard at the content of our popular culture. There is really nothing much to inspire and uplift. And regrettably there also is not much to counter the empty commercialism which is so prevalent today. It has become the norm.

So where are we in all of this? What is our role? What part can we as Senators—authority figures, statesmen representing the people—play while we simultaneously endeavor to carry out our 200-year-old mandate, bequeathed to us by some of the most brilliant men of their age, or of any age before or since?

Well, we have our prescribed and our tangential duties, we can show up for roll call votes, carry out our committee assignments, issue the obligatory press releases, dutifully follow up on constituent requests, and answer our mail. All of these are necessary and to a greater or lesser degree important. But a reemphasis by the Senate on our strict institutional role is certainly something which I would like to see. It is a sobering and heavy responsibility all by itself, and its very weightiness tends to cool the over-heated passions of political demagoguery. After all, that role is, in a Constitutional sense, the reason we are here. The Framers expected a zealous defense of our powers to keep the tyrants at bay.

But there is still another role—an intangible something—that we who are privileged to sit in this body, and indeed leaders in the private sector, as well as those who write and reflect upon the news, are called upon to play. I call it the duty beyond our duties. The duty I am talking about is the duty to endeavor to inspire others and to demonstrate, through personal example, that public service of all types ought to be an honorable calling. Contrary to what many believe, it is absolutely the wrong place for the slick and the insincere.

Serving the public in a leadership role demands honesty, hard work, sacrifice, and dedication from those who dare to ask the people for such an awesome trust. Those who ask to shoulder that mantle also shoulder a much larger personal obligation than many of us may regularly contemplate. We all have a clear responsibility to serve as role models to inspire our people, and particularly our young people, to be and to do their best. On that score, we politicians, as a group, generally miss the mark. Perhaps it's because power, whether it be the power of political office, or the power to run giant corporations, or the power to report and analyze events, is a very heady thing. It can lead to arrogance, self aggrandizement, disregard for playing by the rules, and contempt for the people. It can lead us to forget that we are servants, not masters.

In the real world, exemplary personal conduct can sometimes achieve much more than any political agenda. Comity, courtesy, charitable treatment of even our political opposites, combined with a concerted effort to not just occupy our offices, but to bring honor to them, will do more to inspire our people and restore their faith in us, their leaders, than millions of dollars of 30-second spots or glitzy puff-pieces concocted by spin meisters.

These are troubling times for our nation and our people on both the national and international fronts. For our country to weather the rough seas ahead, we must use most tempered judgments and seek out our best and most noble instincts. Our example here can be a healing element—a balm to salve the trauma of distrust and disillusionment too long endured by a good people. Let each of us follow his or her own conscience when it comes to issues, but as we do so, may we be ever mindful of the sublimely uplifting part which the example of simple dignity, decency, decorum, and dedication to duty can play in the life of a nation.

Let us also remember that even after two hundred years, the Senate is still the anchor of the Republic, the morning and evening star in the American constitutional constellation. It has had its giants and its little men, its Websters and its Bilbos, its Calhouns and its McCarthys. It has been the stage of high drama, of comedy and of tragedy, and its players have been the great and the near great, those who think they are great, and those who will never be great. It has weathered the storms of adversity, withstood the barbs of cynics and the attacks of critics, and provided stability and strength to the nation during periods of civil strife and uncertainty, panics and depressions. In war and in peace, it has been the sure refuge and protector of the rights of the states and of a political minority because great and courageous Senators have always been there to stay the course and keep the faith. As long as we are ever blessed in this august body with those who hear the clear tones of the bell of duty, the Senate will continue to stand—the great forum of constitutional American liberty!

REMARKS BY PRESIDENT GEORGE BUSH

Senator Lott, Senator Daschle, Senators Thurmond and Byrd, distinguished guests, ladies and gentlemen:

What a special pleasure it is to look around this room and see so many respected former colleagues—and friends. As a former member of the extended Senate family, tonight has a certain homecoming feel to it. It's nice to be back.

It is particularly an honor to follow in the footsteps of the distinguished leaders who

preceded me as lecturers for this series. Mike Mansfield, Howard Baker, and Robert Byrd are true giants in the Senate's history—each, in his own way, ''a Senator's Senator.'' In this room, it doesn't get any better than that.

It being apparent that a quorum is present, I feel it only proper to establish a single ground rule. I am ill suited to ''lecture'' anyone here about the Senate. As the resident expert on ancient Greek history, not to mention the Senate itself, Senator Byrd can tell you what happened to Socrates. Socrates was the great philosopher who used to go around lecturing everybody . . . until they poisoned him.

So to be clear, this is not a lecture. *Nor* is it a filibuster.

Speaking of filibusters, Barbara is sorry she couldn't be here this evening.

Yesterday, we were in Austin to see our son, George W., sworn in for his second term as Texas Governor. And two weeks ago, we were in Tallahassee to see our other politically-active son, Jeb, sworn in as Governor of Florida.

Today, the boys are sworn in . . . and their parents are worn out.

(My politics today relate to our two sons. I think this is my first visit to the Senate since leaving Washington on January 20, 1993—six years ago today.)

Of course, 18 years ago today, Barbara and I were participating in another inauguration—one that brought us back to Washington, and back to Capitol Hill.

It's funny, I ran for the Senate twice—both times with a spectacular lack of success. But for eight years, and then four more after that, all the Senators called me ''Mr. President.''

When I reported to the Senate in 1981, without a doubt the biggest influence made on me in terms of the Senate came from my father's 11 years of service here. My Dad loved the Senate. He had come out of a business background, and had done his civic duty serving as Town Moderator of Greenwich, Connecticut.

He respected his fellow Senators. He found the Senate a civil place to be. The term ''gentleman,'' he felt, applied far more often than not—just as term ''gentle lady'' applied to Margaret Chase Smith of Maine and other distinguished women who have called the Senate home.

My Dad and LBJ could be cross-threaded, as we say in the oil business, often disagreeing on issues. But on more than one occasion he told me he respected LBJ's leadership. I'll never forget it. He said: ''Lyndon's word was good. If he said a vote would be at a certain time, you could bet your bottom dollar that that was what would happen.'' Dad felt that LBJ as leader was fair to the minority and ran a tight ship.

Like my Dad, my predecessor in the Vice Presidency and the White House, Harry Truman, loved the Senate. Truman called the 10 years he spent here in the Senate the ''happiest of his life''—and I have to say I enjoyed my eight years here, too.

In letters written to his beloved wife, Bess, then-Senator Truman confided it took a while to learn the ropes. Along the way, one valuable piece of advice he received came from Ham Lewis of Illinois, the second-longest serving Democratic Whip. Said Lewis to the Missouri freshman: ''For the first six months you'll wonder how you got here. After that, you'll wonder how the rest of us got here.''

Later, Truman would write: ''I soon found that, among my 95 colleagues, the real business of the Senate was carried on by unassuming and conscientious men—not by those who managed to get the most publicity.'' Clearly, this was before the days of C–SPAN.

As for me, I loved interacting with Senators from both parties. Of course, it was easier for me, better, as Vice President. For one thing, with Howard Baker at the helm, my Party controlled the Senate for my first six years here—that helped. But after I moved down the street to the White House, my dealings with the Senate seemed to involve more raw politics.

As President of the Senate, the primary constitutional role I served was breaking tie votes. I cast seven tie-breaking votes as VP—three times alone on the esoteric matter of nerve gas. (Most unpopular, those tie-breakers were.)

A myth arose from one of those votes that my mother bawled me out. Well, she didn't quite do that. She did give advice, however. After attending my first State of the Union speech as Vice President, for example, Mother called to say she had noticed that I was talking to Tip O'Neill while President Reagan was addressing the country. ''He started it,'' was all I could think to say.

''Another thing,'' she continued. ''You should try smiling more.''

''But Mum, the President was talking about nuclear annihilation.''

Everyone belittles the job of Vice President. The saying goes that the daily duties of the Vice President include presiding over the Senate and checking the health of the President. Theodore Roosevelt derided it as a ''stepping stone to oblivion.'' FDR's first VP, ''Cactus'' Jack Garner, said the vice presidency ''wasn't worth a warm pitcher of spit''—lovely thought, that.

(Historian Arthur Schlesinger, Jr. went so far as to suggest abolishing the office altogether, but then old Sam Rayburn would be quick to note that Arthur had ''never run for sheriff'' himself.)

When asked his thoughts on the Vice Presidency, LBJ, who was Majority Leader at the time, said: ''I wouldn't want to trade a vote for a gavel, and I certainly wouldn't want to trade the active position of leadership of the greatest deliberative body in the world for the part-time job of presiding.''

In fact, LBJ wielded so much power as Majority Leader that, when John Kennedy introduced him at a 1959 Boston dinner, he observed that: ''Some people say our speaker might be President in 1960, but, frankly, I don't see why he should take the demotion.''

A year later, Kennedy became only the second Senator to be elected President directly from the Senate—and as we now know, LBJ traded his vote for the gavel. Explaining his acquiescence to accepting the Number Two spot on the ticket, he said: ''I felt that it offered opportunities that I had really never had before in either . . . the House or the Senate.''

The truth is: Many pundits and press people ridicule the Vice Presidency to this day, but most Members of Congress would readily take the job. As Presidents delegate more responsibilities to their VPs, the job has become more productive. And, TR's critique notwithstanding, it has proven to be a fairly good stepping stone to the Presidency—or at least the Party nomination.

Just as LBJ became a revered role model for students of the Senate, I also learned from his example when I became President.

In his memoirs, LBJ stated he was ''determined, from the time I became President, to seek the fullest support of Congress for any major action that I took.'' I shared his desire to achieve consensus where possible.

When I raised my right hand and took the Oath of Office 10 years ago today, I meant it when I held out my hand and pledged to work with the leadership here on Capitol Hill. And despite the ugliness that erupted early on over the Tower nomination—and later over the nomination of Justice Thomas—I was generally pleased with much of what we accomplished during the first two years. Both the Clean Air Acts and the ADA were landmark pieces of legislation that became a reality only after the White House and the Senate demonstrated bipartisanship and compromise.

Of course, every so often, an issue would trigger the tensions built into Mr. Madison's system of checks and balance. When it did, progress necessarily became more difficult to achieve. The irony is: Many observers would look at this so-called ''gridlock'' and think the system was broken—when it was actually performing its ''salutary check on the government,'' just as the Framers intended.

Then came the Fall of 1990, when two major issues came to the fore: The budget, and the Gulf crisis. From the beginning, I wanted bipartisanship on both issues—and consensus. But I soon found out that consensus, on either matter, would not be easy to achieve.

For example, there was a fundamental difference of opinion between the Senate and the White House over the Senate's role in declaring war—one that dated back to the War Powers Act. Like all of my predecessors, I believe the War Powers Act to be unconstitutional; but as President, I still felt an obligation to consult fully with the Senate. In my mind, not agreeing with the War Powers Act did not mean ''failure to consult.''

And during the course of the Gulf crisis, I consulted with the Congressional leadership and bipartisan groups on more than 20 occasions—not including individual meetings and phone calls. I always remembered how LBJ had gone the extra mile to work with Congress at the time of the Gulf of Tonkin Resolution in 1964. As he candidly confided that August 4th, during a meeting with nine Senators (led by Mike Mansfield) and seven House leaders in the Cabinet Room, he said he didn't want to ''go in unless Congress goes in with me.'' The resolution subsequently passed the House unanimously—416 to none. In the Senate, the tally was 88 to 2 in favor.

(Incidentally, LBJ thought Truman had made a mistake not asking for a resolution of support from Congress when he went into Korea. It wasn't until the Formosa Straits crisis erupted early in 1955 that a President would reach out to Congress in such a fashion. On January 24, 1955, the House took but an hour to consider President Eisenhower's message requesting a resolution before it passed 410 to 3. Four days later, the Senate followed suit by an 83 to 3 margin.)

If I had to pick one vote, I'd say the Senate vote in January 1991 on the resolution authorizing me to use ''any means necessary'' in order to liberate Kuwait was the key Senate vote during my Presidency. To be honest, for weeks we debated whether to try and pass such a resolution in the Senate. I'm glad we did bring it here, and pleased that it passed. But the 52–47 margin was the slimmest Senate margin ever to vote for war, and naturally I regret that we couldn't convince more in the Majority to help us send a clear and united signal to Saddam, and the world, about our resolve to lead.

Before the resolution passed, my respected friend, Sen. Inouye came to me and warned that ''if things go wrong (on the use of force), you could well be impeached.'' I'll never forget that. As it was, several House members had already filed papers of impeachment.

But we stayed the course, and I hope history will say not only that we won—but that we won with honor. And when our troops came home, this time they were welcomed with cheers—not jeers. It was a united country that saluted our troops, united by a new respect for our military and for U,S. world leadership.

Prior to the commencement of Desert Storm, we honored Congress' right to be heard, and to cast their votes, before a single shot was fired. In ending the war when we did, after Kuwait had been liberated, we also kept our word to our coalition partners—and abided by the international authority under which we agreed to operate. Our principled leadership and restraint enhanced our credibility in the region, and earned us a windfall of political capital—which we, in turn, used to jump-start the peace process.

As President, it fell to me to lead this effort; but let me note for the record that no President was ever more blessed by a superb team. ''Excellence'' best describes the people I had at my side.

I also want to note the special role played by one of your future speakers in this outstanding series, Bob Dole. It is well-known that Bob and I went head-to-head a time or two on the campaign trail—but when the dust of political combat settled, we were always able to put it behind us, and close ranks. It's a good thing, too, for during my four years as President, I earned the distinction as only the second Chief Executive to serve a full term without Party control in either House of Congress. As a result, I came to rely heavily on Bob Dole—and not once did he let me down.

He was the model Party leader in the Senate—never putting his agenda ahead of the President's. In my opinion, you could write a textbook based on the way he handled a tough job. Through it all, he showed great class, and courage, and leadership.

In the final analysis, I had my chance to serve, and did my best. I messed some things up, and maybe got a few things right. For four years, I was up against a Senate Majority that looked very differently at some of the key issues I faced as President, but I never felt that it wasn't within their right. That's just the way it was, and I am quite content to step aside and let history judge the merits of our actions.

Now, since leaving Office, I have stayed away from Washington—but that does not mean I lack interest in events here. I have refrained from commenting on the serious matter now before the Senate—and will continue to do so. But like Howard Baker and many others, I confess that the lack of civility in our political debate and official dealings with one another concerns me.

I worry, too, about sleaze—about excessive intrusion into private lives. I worry about once-great news organizations reduced to tabloid journalism—giving us sensationalism at best, smut at worst. (I have to be careful: I used to go around bashing the media, to standing ovations I might add, until a friend wrote and told me to stop it. So I joined Press Bashers Anonymous . . . and I've been clean for six months now.) But I do think the press needs to be more accountable.

All in all, it seems to me that, whereas the problems looming over this town dealt more with budget deficits in times past, today we are confronted with a deficit of decency—one that deepens by the day. Washington is a place for big ideas, and doing big things; but it's also a small town in many respects, too small for the bitter rancor that has divided us as people in recent times.

Having said that, as a former President, I don't believe in placing outside pressure on the Senate. I have felt it is better for the Senate to chart its own course and do its business without my intervention.

It is a popular notion, in some quarters, to name former Presidents as ''senators-for-life.'' After seeing what has happened to General Pinochet, I'd rather pass on that. I am not one who feels that former residents of 1600 Pennsylvania must be consulted, or that some office must be created to use their expertise.

Writing in his book *Mr. Citizen* after he left Office, President Truman suggested designating former Presidents as ''Free'' members of Congress—with the right to sit in the Congress, take part in the debate, and sit in on any committee meetings, *but* with no right to vote. (This from a dangerously titled chapter, ''What to do with Former Presidents?'') I have great respect for President Truman, but no interest in such a concept.

Besides, should I speak up on a hot or controversial issue, some enterprising reporter would go to one of my sons and say: ''Your nutty father feels this way, Governor. How do you feel?''

They don't need that grief—nor do I.

It was Thomas Jefferson who said: ''There is a fullness of time when men should go, and not occupy too long the high ground to which others have the right to advance.''

So it is for the Bush family, just as it is here in the Senate family.

In his 1963 book, ''A Senate Diary,'' journalist Allen Drury published the daily diary he kept from 1943 to 1945 when he was a newly assigned reporter covering Capitol Hill. It's an extraordinary book that recorded his initial impressions, and captured the essence of the daily proceedings—particularly in the Senate.

Of the Senators themselves, Drury summarized: ''You will find them very human, and you can thank God they are. You will find that they consume a lot of time arguing, and you can thank God they do. You will find that the way they do things is occasionally brilliant but slow and uncertain, and you can thank God that it is . . . That is their greatness and their strength; that is what makes (the Senate) the most powerful guarantor of human liberties free men have devised.''

One last thought about the Senate.

Fifty years ago, I was starting out in the oil business—out on the dusty expanse of West Texas. In those days, in that place, a man's word was his bond. So much so, in fact, that much of our business was done on a handshake.

There aren't many places where you can still do business on a handshake. But you can still do it in the United States Senate.

Indeed, gathered as we are in this solemn setting, we not only marvel at how the universe outside these hallowed walls has changed over the last 189 years—we also take comfort at how much the world inside these walls has remained the same—how a timeless code of duty and honor has endured. And we can thank Almighty God that it has.

In this light, it is fitting to close with the words Aaron Burr used to close his career in the Senate. In his retirement address of 1805, Burr eloquently noted: ''It is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political frenzy and the silent arts of corruption . . .''

As long as there exists a Senate, there will exist a place of constancy, of Madisonian firmness—a place unlike any other, where the sacred principles of freedom and justice are eternally safeguarded. As with this majestic chamber, may we always be humbled before it—and cherish it ever more.

Thank you very much.●

RETIREMENT OF THOMAS G. PELLIKAAN

● Mr. DASCHLE. Mr. President, Thursday, January 21 marked the end of Thomas Pellikaan's Senate career.

Over the past 35 years, Tom Pellikaan served the Senate with distinction in various capacities—first as Senate press liaison and then at the Office of the Daily Digest, where he spent the majority of his Capitol Hill career. He advanced from a staff assistant in the Daily Digest office to serve as Editor of the Daily Digest since 1989.

Tom's attention to detail is well known around the Halls of the Senate. His office has the responsibility of ensuring that the information contained in the Daily Digest section of the CONGRESSIONAL RECORD reflects the actions taken on any given day in the Senate. The Daily Digest is an important and useful tool for the Senate family. Tom and his staff are to be complimented for the excellent job they have done and will continue to do.

While Tom has left the Senate, I am sure his interest in the Senate will continue. On behalf of my Democratic colleagues, we wish him well as he enjoys the ''country life'' on his farm in Culpeper, VA.●

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S933–S960

Impeachment of President Clinton: Senate, sitting as a Court of Impeachment, continued consideration of the articles of impeachment against William Jefferson Clinton, President of the United States.

Pages S933–56

By voice vote, Senate agreed to a motion to adjourn. **Page S956**

Senate will continue to sit as a Court of Impeachment on Monday, January 25, 1999.

Adjournment: Senate convened at 10:05 a.m., and by voice vote agreed to adjourn at 3:55 p.m., until 1 p.m., on Monday, January 25, 1999.

Committee Meetings

No committee meetings were held.

House of Representatives

Chamber Action

The House was not in session. It will reconvene at 12:30 p.m. on Tuesday, February 2.

Committee Meetings

No Committee meetings were held.

Next Meeting of the SENATE

1 p.m., Monday, January 25

Senate Chamber

Program for Monday: Senate will continue to sit as a Court of Impeachment to consider the articles of impeachment against President Clinton.

Next Meeting of the HOUSE OF REPRESENTATIVES

12:30 p.m., Tuesday, February 2

House Chamber

Program for Tuesday, February 2: To be announced.

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